Assessment of the Judicial Sector in Rwanda

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List of abbreviations and acronyms

AJEPRODHOR	Youth Association for the Promotion and Defense of Human Rights (Association des jeunes pour la promotion et la défense des droits de l'homme)
ASF	Lawyers Without Borders (Avocats Sans Frontières)
CC	Canton Court (Tribunal de Canton)
CDIPG	Center for Documentation and Information on Genocide Proceedings
CFI	Court of First Instance (Tribunal de Première Instance)
CEM	Muslim Student Community of NUR
CLADHO	Clearinghouse for the Promotion and Defense of Human Rights (Collectif des Associations pour la Défense des Droits de l'Homme)
CTB/BTC	Belgian Technical Cooperation
DCHR	Danish Center on Human Rights
EEC	European Economic Community
EU	European Union
GOR	Government of Rwanda
GTZ	German Technical Cooperation
HRNGO	Human Rights Non-Governmental Organization
ICTR	International Criminal Tribunal for Rwanda
IPJ	Criminal Investigation Police Officer
DL	Decree-Law
LIPRODHOR	Rwandan League for the Promotion and Defense of Human Rights (Ligue Rwandaise pour la Promotion et la Défense des Droits de l'Homme)
MIGEPROFE	Ministry of Gender and Women's Development
MINIJUST	Ministry of Justice and Institutional Relations
MININTER	Ministry of Interior
MSD	Management Sciences for Development
NCHR	National Commission for Human Rights
NCJT	National Center for Judicial Training
NGO	Non-Governmental Organization
NOVIB	Netherlands Cooperation Organization
NPA	Norwegian People's Aid
NPRP	National Poverty Reduction Program
NUR	National University of Rwanda
NURC	National Unity and Reconciliation Commission
OG	Official Gazette
OMP	Public Prosecutor (Officier du Ministère Public)
PREPAF	Project for Poverty Reduction and Action in Favor of Women
PRI	Penal Reform International
RCN	Citizen's Network (Réseau des Citoyens)
RPF	Rwanda Patriotic Front
SC	Supreme Court
SCM	Superior Council of the Magistrates
SIDA	Swedish International Development Agency
TIG	Community Service (Travaux d'Intérêt Général)
UNDP	United Nations Development Program
ULK	Kigali Independent University (Université Libre de Kigali)
UNHCR	United Nations High Commission for Refugees
USAID	United States Agency for International Development
USD	United States Dollar

Preface

During July and August, 2002, a team of consultants from CAGEP-Consult studied the Rwandan justice sector under a contract with USAID/Rwanda. Mrs. Marie-Thérèse Kampire led the team, which included Professors Stany Kisangani Endanda and Déo Mbonyinkebe, and M. Réné Abandi. This team organized interviews with national authorities in the justice sector, members of the Bar Association, magistrates (both judges and prosecutors), litigants (including plaintiffs, defendants, witnesses, and prisoners), and representatives of international and local Non-Governmental Organizations (NGOs)[1] and donor agencies. Interviews were conducted in the City of Kigali, and the provinces of Kibuye and Butare.

The main objectives of this study were to 1) inventory the judicial system's overall infrastructure, 2) assess beneficiaries' perceptions of the system's efficiency, 3) gauge appreciation of the Gacaca process, 4) measure opinion of the International Criminal Tribunal for Rwanda (ICTR), and 5) make recommendations on how to strengthen the judicial system overall.

The team expresses its profound appreciation to all of the people, Rwandan and expatriate, who devoted time for interviews, provided their perceptions and opinions in a frank manner, and made themselves available, to the extent possible, whenever the team requested additional documentation. Nonetheless, some constraints were met during the course of this study, including that the:

- time allocated to the study did not correspond with the magnitude of the task;
- administration of the study's survey coincided with a judicial vacation period; and
- respondents' professional calendars did not always facilitate appointments for interviews.

Results of this research have been discussed with representatives of USAID's Democracy and Governance Program, as well as concerned judicial system officials. All pertinent comments and suggestions were taken into consideration when preparing this final report.

Our sincere gratitude goes particularly to USAID/Rwanda for its generous support from the beginning of this study through its final phase.

The analysis and points of view expressed in this report are strictly those of the team that produced it and do not necessarily reflect any official position or view of USAID/Rwanda. The authors assume all responsibility for any errors that might be contained in this document.

[1] We shall use the NGO acronym to indicate international non-governmental organizations that intervene in the judicial system.

Summary: Rwandan Judicial Sector Assessment

Mrs. Marie-Thérèse Kampire, Prof. Stany Kisangani Endanda, Prof. Déo Mbonyinkebe, Mr. Réné Abandi

The Rwandan judicial system before the genocide bore the characteristics of the socio-political environment of that period: an overall negation of democratic principles and the rule of law in government practices. This negation led to war and culminated with the genocide of 1994. This war and genocide largely destroyed the principles, structures, and resources of the Rwandan judicial system.

With the assistance of various donors and NGOs, the new government has achieved important accomplishments in the judicial sector and the system has begun to function again. However, there is still a lot to be done in order to put the rule of law into practice, given the heavy burden imposed by the genocide. With more than 100,000 genocide suspects incarcerated pending trial, the social fabric destroyed and in need of reconstruction through national reconciliation, rampant poverty, and an acute lack of government resources, a variety of stakeholders look for parameters that will enable them to understand and act in order to build a strong judicial system.

This study contributes toward this effort. USAID/Rwanda requested it in light of its five-year strategic plan (2004-2009) for supporting the Rwandan judicial system. Its objective is to provide a comprehensive inventory of the Rwandan judicial system, and to assess its needs based on perceptions of the system by its officials, players, and intended beneficiaries.

The methodology for this study was systemic. Data was collected through documents, interviews with internal system players and external stakeholders, and a standardized questionnaire administered during interviews with high-ranking officials in the judicial system,[2] magistrates (judges and prosecutors), litigants (plaintiffs, defendants, witnesses, and prisoners), and representatives of the civil society, Human Rights Non-Governmental Organizations (HRNGOs), donors, and NGOs who have a stake in the system. These interviews were conducted in three locations: the City of Kigali, and the Provinces of Kibuye and Butare. A workshop to evaluate the preliminary results was held with judicial system officials and donor and NGO representatives, and helped to complete the data and enrich the final analysis.

The following summarizes the main results of the study:

1. Mission and policy of the justice sector

The study determined that the mission of the judicial sector is to contribute to enforcement of the rule of law and establishment of justice in Rwanda. The Government of Rwanda (GOR) policy in the judicial sector has three main long-term components, namely to develop 1) infrastructure, 2) a judicial and organizational base for effective system functioning, and 3) human resources capacity. In addition, the GOR is pursuing the short-term policy of resolving the legacy of the genocide and of developing overall workplace logistics to facilitate optimal functioning of the system.

The survey results show that this mission is generally known. However, the system's players, both individually and collectively, do not consistently carry it out. Thus more training is needed to explain the mission more and to make it operational. This educational effort on the policies of the Ministry of Justice and Institutional Relations (MINIJUST), focused on system players and their partners, should occur through regular and unambiguous information provided in seminars and workshops.

[2] The President's Office, MINIJUST, Supreme Court, General Prosecutor's Office, Police, and National Commissions.

2. Main components of the judicial system

Judges (*magistrats assis*) preside over four levels of jurisdiction:

a) Canton Courts (*tribunaux de canton*, at the district level)
b) Courts of First Instance (*tribunaux de première instance*, at the province level),
c) Courts of Appeals, and
d) The Supreme Court.

The Supreme Court is made up of six sections:

a) The Department of Courts and Tribunals,
b) The Court of Cassation,
c) The Constitutional Court,
d) The Public Accounts Court,
e) The State Council, and
f) The recently created Department of Gacaca Jurisdictions .

Prosecutors (*magistrats debouts*) include:

a) A state prosecutor in each Court of First Instance (CFI), who works closely with the Judicial Police, which is part of the National Police;
b) A prosecutor general's office for each Court of Appeals; and
c) A prosecutor general's office for the Supreme Court.

The study revealed that state prosecutors at the CFI face severe hardship, for they labor under crushing caseloads while prosecutors working in the Canton Courts (CC), Courts of Appeals (CA), and some sections of the Supreme Court experience much lighter caseloads.

Also, the communication, data management, and information systems are still in a developmental phase, which can make it difficult to coordinate and exploit everyone's time and expertise effectively.

This whole structure is currently undergoing reform, notably the structure of the Supreme Court and the jurisdictional definitions of the lower Courts. This activity is pursuant to the draft decree-law on reforming judicial organization and competence, which requires "putting things in order in the judicial system" and charges a National Ad Hoc Reform Committee to accomplish it.

3. Judicial system physical infrastructure

The judicial system's infrastructure was heavily damaged during the war and genocide, with its equipment looted or destroyed. Outstanding efforts have been made by NGOs and donors to rehabilitate and re-equip Rwanda's judicial system at a minimum level. However, many buildings are still in bad shape. In many provinces, judicial staff experience difficult working conditions, like cramped offices, court rooms with limited or no furniture, and insufficient working logistics whose maintenance is less than desired.

4. Human resources in the judicial system

After the war, the Rwandan judicial system had fewer than ten licensed attorneys in each of the judicial and prosecutorial categories. Non-lawyers were therefore nominated both as judges and prosecutors, and pursued an accelerated training program at the National Center for Judicial Training for three to six months.

The number of magistrates and their qualifications have significantly improved since the genocide, with a growth rate of 644 and 1,000% respectively in the number of judges and prosecutors who possess at least a bachelor's degree in law.

However, despite this remarkable growth, the number of magistrates possessing at least a bachelor's degree in law remains insignificant (only 67 out of 733, or 9.1%). This presents a serious concern to government officials and other stakeholders. Current career and working conditions, such as low salaries and qualification requirements, do not attract many young graduates of the National University of Rwanda (NUR) Faculty of Law (407 since 1994-95).

Even when magistrates have a university education, they are still young and thus require ongoing, rigorous training, as well as exposure to the working environments of other magistrates, in order to instill a code of judicial conduct and ethics.

5. Financial resources and donor allocations

In the current projections of GOR expenditures, MINIJUST receives less than 2% of the entire budget. This portion has decreased since 1999 (from 1.9 to 1.3%), although funds for capital expenses have increased (up to a little more than 5% of budget predictions). These projections have been taken into account by foreign donors, which have decreased their capital support since 2000 (from 3.4 to 2.4 billion RWF in 2002) while reallocating part of these funds to operations. The European Union remains the biggest donor, followed by Belgium, the United States, the Netherlands, and Canada.

The Supreme Court currently has an autonomous administrative structure and budget, which should reinforce its independence. In addition, the creation of the Department of Gacaca Jurisdictions within the Supreme Court has led to a substantial increase in this court's budget.

Although donor support is strongly appreciated by judicial system players, these actors expressed a need for more transparency and flexibility in the disbursement and management of funds, as well as greater donor support for MINIJUST's coordination initiatives. This ministry wishes to be consulted, in collaboration with its partners, on the priorities to pursue.

All donors had similar observations about MINIJUST, namely weak planning and global vision, weak coordination of initiatives, lack of transparency in the use of funds, and a partial lack of feedback.

The interviewers noticed among these various players a clear desire to develop more explicit planning and a deeper and more frank collaboration, with the mutual interest of improving the Rwandan judicial system.

6. The work of the magistrates

As a group, Rwandan magistrates continue to find themselves confronted with the gigantic task of instructing and judging thousands of people caught up in the genocide proceedings, even with the introduction of the Gacaca Jurisdictions. Added to this caseload are various new civil and criminal cases, especially in light of an increasing criminal docket. Furthermore, many magistrates are burdened with administrative tasks. In addition, having so many administrative collaborators puts a disproportionate burden on these administrative tasks.

From 1997 to May 2002, 7,211 people accused of genocide were judged. This is an impressive achievement, especially in comparison to the ICTR's results. The Rwandan judicial system did so with the essential support of NGOs like Citizens' Network (RCN) and Lawyers Without Borders (ASF). It is important to underscore that no inmate is currently incarcerated without a charging file. This alone is a significant achievement by the prosecutor's offices.

As for judicial independence, a majority of lawyers and magistrates estimated that judges are not independent from the executive power. This lack of independence has several sources: financial dependence on the executive branch, modest compensation that could lead to conflicts of interest, and a low level of training for a large number of judges, which weakens the judiciary overall. However, the self-censorship by judges themselves was noted as a strongly determinative factor of dependence. Magistrates must have the courage to exercise their judicial independence and denounce interference in their decisionmaking by the Supreme Court and the National Commission on Human Rights (NCHR), even though they do not feel sufficiently protected by the Supreme Court.

Finally, the Bar Association, which was only created in 1997 (at the same time as the paralegal body), has made tremendous progress and has significantly contributed to the judicial system's progress with the support of ASF and the Danish Center for Human Rights (DCHR). The Bar Association experiences a great demand by indigents for legal assistance and has opened an office of consultation and defense. It has the same needs as the magistrates with respect to continuing legal education and documentation.

7. The efficiency of the system

Overall, 65.1% of those surveyed perceived that the Rwandan judicial system's main weakness is its slowness. The second weakness, corruption, was noted by only 16% of these respondents.

However, despite the system's slowness, 42.5% of sampled litigants say that justice is well done when it is administered. 25.5% think the opposite, while other respondents pointed to other weaknesses but in much smaller proportions. The incompetence of magistrates and interference by the Executive branch were noted more by top officials in the judicial system, HRNGOs, and donors.

8. Perception of vulnerable groups

Interest in the question of access to justice led to expanding the survey to assess perception of access to equal justice by vulnerable groups.

One of the major problems linked with inaccessibility to justice is that certain population groups do not have the capacity to pay lawyers' fees. In addition, no fund

exists to help lawyers recover their fees when they represent indigents. According to respondents, vulnerable groups, in descending order of vulnerability, are: *the poor, women, children, genocide survivors, genocide orphans, street children, and the physically and mentally disabled.*

It is surprising that the "Twa" – a numerically and sociologically vulnerable ethnic group - were not mentioned at all. It is worth noting that their rights have been significantly violated, probably more than any of the groups mentioned.

To address these difficulties, some respondents think that the State should get more involved in ensuring sensitization, generally providing free representation to all, and administering fair justice and appropriate social policies.

9. Appreciation of the Gacaca system dynamics

In 2001, the Department of Gacaca Jurisdictions was created within the Supreme Court, pursuant to adoption of an organic law creating and organizing it.

One year later, this law was implemented, with a pilot project in one sector per province. The Department of Gacaca Jurisdictions is in the process of making its strategic plan, which will involve all of its partners, including the National Police, Prisons,... The establishment of its administrative structure is still in process.

Citizens perceive the mission of the Gacaca Jurisdictions as to 1) sentence the guilty, 2) acquit the innocent, and 3) contribute to national reconciliation. The majority of respondents praises the idea and appreciates that Gacaca respresents a last resort after all other means of resolving the genocide prosecutions have failed.

The survey demonstrated that the Gacaca judges - *"inyangamugayo"* - have a vision of their work which corresponds, more or less, with the terms of the law instituting the Gacaca Jurisdictions. These judges highlighted that the complexity of their mission, the risk of vengeance, and the lack of remuneration are all distressing aspects of their work. This lack of compensation may weaken the patriotic spirit of Gacaca judges, on which the government so heavily relies. The international community should intervene to provide the necessary assistance.

Among the advantages that these *inyangamugayo* judges have are the confidence that litigants have in them and the predicted widespread participation of the population, especially witnesses of the genocide horrors. These judges, conscious of their shortcomings on judicial matters, wish to receive training.

10. Appreciation of Community Service requirements and of the International Criminal Tribunal for Rwanda (ICTR)

Community Service (travaux d'intérêt general or TIG) is positively perceived overall, with an average positive rate of 73.16% versus a negative response rate of 26.84%

Magistrates think that the structures for planning and organizing *TIG* are taking too long to be put in place.

As for the ICTR, negative perceptions slightly outweigh the positive, with 56.4% of respondents having negative perceptions versus almost a third with a positive vision of the same tribunal. Respondents deplored the ICTR's ineffectiveness (some ten cases processed with a substantial budget versus more than 7,000 cases processed in Rwanda under almost heroic conditions); this court's lack of educational impact on the

Rwandan population because of its distance; and its weak contribution to the fight against the culture of impunity.

High-ranking officials, as well as most other stakeholders and players in the judicial system, hope for a better collaboration between the ICTR and the GOR.

11. Recommendations

This assessment ends with ten recommendations that take into consideration the principle conclusions documented by observation and field survey:

1. Understanding and internalizing the judicial system's mission: Both qualities appear deficient and require an increased effort by different actors and stakeholders (GOR, MINIJUST, the Supreme Court, donors, NGOs, HRNGOs), including systematic documentation and sensitization via diverse approaches (workshops, media campaign, and MINIJUST's progressive operationalization of its mission).
2. Weak inclusion of program donors in the judicial system's activities that they support: In order to offset this weakness, a schedule of meetings between the Supreme Court, MINIJUST, donors, and NGOs must be established and followed. A plan of action to this effect should be made available and updated by MINIJUST.
3. Under-qualification of judicial personnel: Two strategies are imperative. First, personnel must receive a traditional legal education, and second, continuous legal education must take place via seminars, training courses, and study trips. Principle stakeholders in this recommendation are the National Judicial Training Center (whose autonomy needs reinforcement), university institutions, donors, and NGOs.
4. Incentives for the magistrature and improvement of its public image: Some of the measures imperative for addressing these concerns include a more competitive salary scale for qualified personnel, focused continuing legal education, positive rewards, the suppression of defamatory acts and remarks aimed at magistrates, better administrative control of magistrates, and an active campaign against corruption. Stakeholders in this process are the GOR, the Supreme Court, the Superior Council of Magistrates (SCM), donors, and NGOs.
5. Lack of judicial independence: To assure the most judicial independence, it is necessary to reinforce judges' confidence in themselves while improving their professional capacity and code of conduct, assuring greater protection of judges from possible interference, and sensitizing the media to the importance of judicial independence. Those who have a stake in this recommendation are the Supreme Court, the SCM, the NCHR, the magistrates themselves, and civil society, including HRNGOs.
6. Slowness of trials and non-execution of judgments: To cure these perceived weaknesses, administrative responsibilities of judges must be diminished while the capabilities of administrative staff (court clerks and secretaries) are reinforced; courts and prosecutors must be provided with appropriate workplace logistics (vehicles, computers, …) to accelerate investigations and trials, as well as basic documentation and use of their experience effectively by archiving judicial experience while improving database communication. Also, the bailiffs need reinforcement and local authorities should be sensitized on how to execute judgments, especially when dealing with vulnerable people. Stakeholders needed to realize these solutions are the National Law Reform Commission, MINIJUST, the Supreme Court, donors, and NGOs.

7. Citizen ignorance of their rights, obligations, and freedoms: Civic and legal education efforts must take place at all levels of society and through all available channels (MINIJUST, NCHR, teaching and training institutions, HRNGOs, churches, other civic and religious societies, and the media).
8. Social marginalization of vulnerable groups: Initiatives are needed to improve treatment of certain social classes, notably revision of discriminatory laws, creation of positive protections, adoption of concrete social policies and programs relating to these groups' needs, creation of a legal fund to assist indigents, as well as a reparation fund for genocide victims. Stakeholders for this recommendation are the GOR, the Transitional National Assembly, concerned ministries, NGOs and HRNGOs, and religious communities.
9. Assistance to the Gacaca Jurisdictions and Community Service: The Gacaca Jurisdictions, as well as Community Service, play a crucial role in real-life resolution of the genocide's aftermath. They need assistance in training judges, sensitization, remunerating judges, workplace logistics, monitoring, assuring the safety of judges and witnesses, putting the Community Service management structure in place, and searching for additional funds to aid Community Service program operations. Donors, the GOR, the Supreme Court, the police, the media, and civil society are all necessary stakeholders for accomplishing this recommendation.
10. The ICTR, GOR, and Genocide Victims: Effort should be made to create a closer working relationship between the GOR and the ICTR, and to achieve better recognition of genocide victims' status and appropriate legal assistance for them.

Assessment of the Rwandan Judicial System
(Status as of July-August, 2002)

01. Introduction

The Rwandan judicial system before the genocide bore the characteristics of the socio-political environment of that period: an overall negation of democratic principles and the rule of law in government practices. This negation led to war and culminated with the genocide of 1994. This war and genocide largely destroyed the principles, structures, and resources of the Rwandan judicial system.

With the support of various donors and NGOs, the new government has achieved important accomplishments in the judicial sector and the system has begun to function again. However, there is still a lot to be done in order to put the rule of law into practice, given the heavy burden imposed by the genocide. With more than 100,000 genocide suspects incarcerated pending trial, the social fabric destroyed and in need of reconstruction through national reconciliation, rampant poverty, and acute lack of governement resources, a variety of stakeholders look for parameters which will enable them to understand and act in order to build a strong judicial system.

02. Mission statement

The present assessment was requested by USAID. Its objective is to provide a comprehensive inventory of the Rwandan judicial system, and to assess its needs based on perceptions of the system by its officials, players, and intended beneficiaries.

03. Methodology of the study

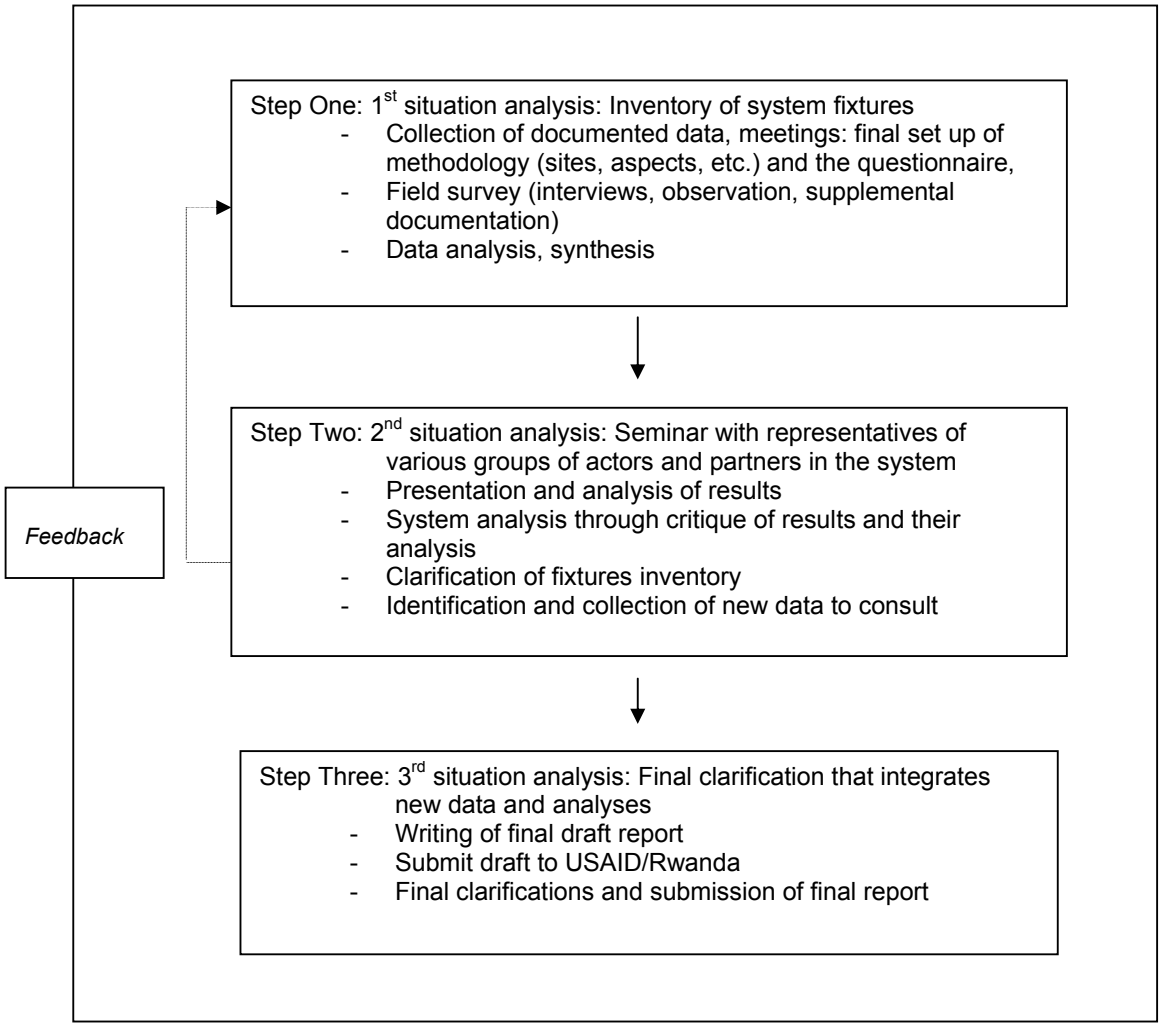
The methodological approach used was the systemic analysis.

The general strategy of this study was inspired by the Greater Involvement of People Concerned by the Problem (GIPC) concept,[3] one that strives both to conduct research and to empower people caught in the conflict being studied, by involving them in the research process and in application of the study's recommendations.

[3] One of the consultants has developed this concept based on failures in conflict management in the Great Lakes Region communities. This approach treats concerned people as actors in the situation being studied, rather than as mere "subjects" of research. See S. Kisangani E-S. *The GIPC as an Alternative Approach in African Ethnic Conflict Studies,* UNI-SOL: Nairobi 2001. (International Colloquium of UNI-SOL, Nairobi 2001).

The model for implementing this strategy includes three big phases, as diagrammed below:

Table 1: Plan of the study's methodological process



The situation analyses were done using a double procedure that includes the 1) collection, analysis, and synthesis of updated information, and 2) organization of a seminar with all involved or concerned players of the judicial system.

A. Data collection and analysis

1. Identification of all players and partners of the system, of human, material, legal and intellectual resources truly available at the time, actions to take – their characteristics, powers, needs, interactions.

2. Updating of data on the functioning of the system, its actors and partners: knowledge of their expectations, policy visions, planned strategies and those that are already in place, system gaps and envisaged solutions, those in preparation.

3. The most exhaustive inventory possible of the system's real needs at all levels.

4. Groups interviewed include:

- Leadership and management entities of the judicial system;
- Players in the system, including standing and sitting magistrates, military magistrates, Gacaca judges, the Bar Association, etc.;
- Representatives of the donor agencies;
- NGOs who are partners in the implementation of justice system support projects;
- Representatives of HRNGOs; and
- Ordinary citizens involved in the judicial process, as plaintiffs, defendants, witnesses, and prisoners.

The sample covered 204 interviews, 15 of which were with authorities of central institutions in the judicial system; 16, with representatives of donor agencies and NGOs; 34, with magistrates, both sitting and standing; 6, with members of the Bar Association; 10, with HRNGO representatives; and 111, with citizens. Litigants were met in the location of their involvement with the judicial system (for example, following a court case in one of the selected jurisdictions), whereas all others were interviewed at their places of work.[4]

5. Choice of sites

The study was conducted in three of Rwanda's twelve provinces: the City of Kigali and two rural provinces, Kibuye and Butare. Many initiatives of sensitization, rehabilitation, and research-action have been conducted at these sites. Some initiatives are on-going, such as that involving the Gacaca Jurisdictions. The Province of Kibuye and the City of Kigali were explicitly outlined in USAID's terms of references for this study. The Province of Butare includes semi-rural Nyanza, which is known as the location for the former king's palace and court, and later, after independence, the headquarters of important institutions like the Supreme Court. Nowadays, a canton court, court of appeals, and general prosecutor's office are located in Nyanza.

It is true that the chosen sites do not cover the total diversity that exists within Rwanda's borders. However, these sites represent common traits of Rwandan culture, whether new or old. This culture is a part of all Rwandan territory. The only sociological diversity observed for the purpose of this study is that resulting from rural, urban, or semi-urban settings. Except for the headquarters of each of the chosen provinces, rural districts were also targeted by the surveys according to their accessibility and taking into account the research team's time constraints.[5]

In all sites, surveys were conducted at the Courts of Appeals (Kigali and Nyanza), the General Prosecutor's Offices for these courts, the Courts of First Instance and the State Prosecutor's Offices for these courts, the Canton Courts, Gacaca Jurisdictions, Bar Association members, NGOs and HRNGOs, and litigants in court proceedings. *The final composition of this sample is provided in Appendix 2.*

6. The research and interviewing team

The research team was interdisciplinary, and included specialists in political science and organizational development, an anthropologist, and a lawyer. Eight students from the NUR were recruited and trained as interviewers, two of whom were in their final year of a political science degree and six of whom were advanced law students. These interviewers were trained to administer the survey tools (questionnaires and interview

[4] Prisoners were interviewed in prison.
[5] Rwanda has twelve provinces. Each is subdivided into districts. In Appendix 2 we have indicated the districts and towns of the provinces used in our survey. Specific districts surveyed are highlighted in bold on this list.

guides), as well as to observe the behavioral aspects of field surveys. The interviewers' training and collection of data was closely supervised by the consultants, who actively participated in the field.

7. Compiling and analyzing data

The team of consultants compiled and analyzed the data. This research team also thoroughly reviewed numerous official texts, various reports, and much more statistical data provided by different institutions (such as the President's Office, MINIJUST, the Supreme Court, Prosecutor's Offices, donor agencies, NGOs, and HRNGOs).

B. Organization of a seminar

Participants were chosen from among the different categories of players and stakeholders in the judicial system, and discussions were centered around the following agenda:

- Presentation and amendment of results obtained from the situation analysis, and
- Identification of weaknesses and strengths.

1. Description of the Government's vision of justice

1.1. Context for emergence of the current vision regarding justice in Rwanda

Before the 1994 genocide, different successive political regimes were unable to put a judicial system in place that conformed to the norms of society. Since independence in 1962, the rule of law and democracy were mentioned as guiding principles of political life and the judicial system. However, since the beginning of the post-independence era in Rwanda, violence quickly became the backdrop for the country's social and political life. The advent of a single party system reinforced this culture of violence. The judicial system suffered major setbacks, culminating with the outright suppression of the Supreme Court in 1978, subjection of all other courts to Executive supervision, and the refusal to create a bar association.

It was under the injunctions issued by the Baule Conference (1989); pressure by an armed opposition movement, the RPF (1990); internal demand for multiparty politics (1990); and constraints imposed by the World Bank on good governance and respect for human rights (1991) which led to different negotiations, beginning in 1992, that resulted in the Arusha Peace Accords. These accords renewed the principles of the rule of law, independence of judicial power, respect for human rights, and that democracy should guide political life and the judicial system. All of this went unheeded: the massacres and genocide of unprecedented magnitude committed by a population incited by the Government called all of these into question.

The principles, structures, and resources of Rwandan judicial system were thus destroyed by the war and genocide.[6]

This history imposed on the Rwandan people and the new Government of National Unity new challenges for the process of reconstruction after the tragic events that culminated in the genocide of 1994:

- Reconstruction of a sustainable peace through unity and reconciliation of a people torn apart by the genocide, and the peaceful resolution of judicial cases linked to the adjudication of more than 110,000 detained suspects of genocide;[7]
- Reduction of the poverty suffered by the majority of this country's population, by instituting a national poverty reduction strategy; and
- Building the rule of law.[8]

It is with this perspective that the GOR assigned a specific mission to the judicial system: **to contribute to building the rule of law in Rwanda**. Different initiatives were taken to achieve this mission.

This assessment comes at a time when many efforts have been deployed and tangible results reached, while pointing out the judicial system's weaknesses that must be improved over time.

In the sections that follow, in addition to identifying this mission and policies subsequent to it, emphasis was also put on how they were perceived. We observed a variety of interpretations by different stakeholders that differed from the government's intended understanding.

[6] All human rights were heavily violated by the genocide and massacres committed on a large scale by a large portion of the population that was instigated by the government, and met by an unexplainable silence of the international community.
[7] See Section 3.6 of the current report
[8] See the GOR website, *Good Governance for Poverty Reduction.*

1.2. Mission of the Rwandan judicial system

As noted above, the group of texts that constitute the current Fundamental Law of Rwanda[9] indicates the basic mission of the Rwandan judicial system as it was defined in 1994: **to contribute to the establishment of the rule of law**. In post-genocide Rwanda, this has the following implications:

- *National unity and reconciliation,*
- *Democracy and pluralism, and*
- *Respect for human rights.*
-

The establishment of the rule of law implies on one hand that *all decisions will be made by applying well known principles or laws without discretion in their application,* and on the other, that *power is exercised with justice, impartiality, and equity.*

The rule of law in Rwanda must be reinforced as an envisioned result. Good governance is one of the strategies adopted by the GOR in this regard and for poverty reduction,[10] which is perceived both as a result of, and starting point for, human rights violations. The GOR has chosen the following basic values of good governance:

1. *The primacy or supremacy of the law (over all other considerations);*
2. *The separation of powers between the Executive, Legislative and Judicial branches;*
3. *Popular participation in the decision making and thus democratization;*
4. A devoted leadership;
5. Transparency;
6. Performance and efficiency;
7. *Equity and impartiality;*
8. A long-term vision;
9. Responsibility; and
10. *An informed and enlightened population.*[11]

The judicial system is an excellent instrument for implementating this rule of law. The GOR assigned the Ministry of Justice the following objectives:

Objectives of the Ministry of Justice[12]

1. Create favorable conditions for the rule of law
2. Ensure an effective functioning of the judicial system
3. Ensure good collaboration between State institutions
4. Ensure protection of the State's legal interests
5. Ensure and improve the efficiency and the effectiveness of MINIJUST's operations
6. Ensure improvement in the functioning of the Ministry's operations and better use of data
7. Ensure the respect and application of laws
8. Reinforce the capacities of the Prosecutor's General Office to the Supreme Court.

[9] The following instruments constitute the current Fundamental Law: the Constitution of 1991, the Arusha Peace Accords and its annexed protocols, notably the Protocol on the Rule of Law signed on August 18, 1992 and the Protocol of Power Sharing signed on August 03, 1993; the Declaration of July 17, 1994 on the formation of institutions; and the Agreement between the Government and different political parties signed on November 24, 1994.

[10] See GOR website, *Good Governance for Poverty Reduction.*

[11] We have italicized the principles we feel contribute most to the establishment of the rule of law. We observe that five of the ten good governance principles directly concern the judicial system.

[12] See MINIJUST website, *The objectives and programs of the MINIJUST. For more objectives, see Appendix 3.*

The following objectives enrich those set out in 2000 by the MINIJUST:[13]

1) Put a legislative framework in place aimed at promoting and reinforce fundamental human rights;
2) Promote a policy that leads to the rule of law in Rwanda;
3) Establish competent, impartial, and independent judicial institutions;
4) Fight against corruption in all of its forms by establishing an appropriate legal and institutional framework;
5) Help the population, especially vulnerable groups (like the poor) with access to judicial institutions;
6) Promote alternative mechanisms for dispute resolution (e.g. arbitration, Gacaca); and
7) Sensitize the Rwandan population to understand Rwandan legislation and to inform themselves of their rights and obligations.

These can be summarized as guiding principles for the GOR's policies and actions regarding the judicial system.[14] It remains evident that efforts to reinforce the rule of law and justice in Rwanda that have not yet been internalized in the post-genocide context.

1.3. Perception of the judicial sector's mission and policies by interviewees

Throughout the document reviews and meetings with various players, stakeholders, and beneficiaries of the judicial system, particular interest was paid to the way interviewees perceived the judicial system's mission through their social beliefs.

Concerning the interviewees' knowledge of the Rwandan judicial system's mission, it was not clear in the conscience of most respondents, at least at the time they were asked this precise question.

At the level of the technical staff of leadership entities (GOR, Supreme Court, Prosecutor General, Commissions), understanding of the mission was rather close to the principles declared in the texts. Answers from twelve staff who were asked "What is the Government's vision in terms of justice in Rwanda?" were the following:

1. Improvement of the organization and functioning of jurisdictions to guarantee the rule of law for all.
2. An independent, accessible, and fair justice.
3. A "just justice": a judicial system which speaks justice.
4. Unity as a basis for security.
5. Resolving the genocide conflicts through the Gacaca Jurisdictions

Whenever interviewees mentioned the concept of "the rule of law," we asked them to explain it.

The different policies cited during interviews of top system officials turned on the following explanations:

1. Building and rehabilitation of infrastructures
2. Human resources development (training of judges and prosecutors)
3. Reorganization of the judicial system, beginning with the restoration of the Supreme Court; creation of a commission on constitutional and judicial reform to write a constitution appropriate to the Rwandan nation, and a commission on legislative reforms to reform laws and reorganize the judicial system.
4. The promotion of human rights, the creation of the National Commission on Human Rights and the National Commission of Unity and Reconciliation.
5. Setting up democratization and decentralization processes.

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[13] Cited by F.M. SSEKANDI, *National Policy Framework, Program, Plan of Action and Implementation Strategy in the Justice Sector. UNDP project RWA/00/B02, Part I: Overview of the Justice System in Rwanda,* May 2001 pages 2-3.

[14] We got them from the constitutional texts and orientation documents from the GOR's plan of action, notably on good governance.

6. Resolving the genocide conflicts through the Gacaca Jurisdictions.
7. The search for necessary resources from donors.

Donors responded that they could not say much about the GOR vision. Their perception is implied from the general mission of judicial systems that are rooted in democratic principles. A*ccording to them, MINIJUST should increase its efforts to inform them more specifically.*

As for magistrates and litigants, their answers indicate that the mission is not known well enough. Most of the interviewees did not even answer that question because they said they did not possess the document that outlined the policy. A comparison of answers from members of the civil magistracy, military magistracy, the Bar Association, civil society, and HRNGOs, indicates the following three convergences:

1. The objective of justice is the GOR policy most often cited by the judicial system (37.5% of civil magistrates put it in first place, as does 50% of the military magistrates and members of the Bar Association, and 40% of the HRNGOs). For them, this objective of justice would consist of building the rule of law, training magistrates, respecting law, eradicating impunity, reforming justice, and establishing a reconciliatory justice. Respondents expressed a mixture of ideas that are taken from various political speeches.
2. 21.9% of civil magistrates and 50% of military magistrates mentioned the fight against impunity. This theme keeps coming up in official speeches.
3. The unity and reconciliation theme was mentioned by 9.4% of civil magistrates and 30% of HRNGO members.

Other understandings of GOR judicial policy include: the speeding up of cases (10.7% from the Bar Association), the rehabilitation of infrastructures and the fight against corruption (20% from civil society and HRNGOs), the qualifications of the judicial staff (20%), and the system of having a unique judge in trial courts (10% from civil society and HRNGOs).

Concerning the magistrates' contribution to implementing strategies for GOR policies, a set of answers from judges and prosecutors lead to support of government policy to reinforce laws (28.1%), administer justice (21.9%), become impartial (12.5%), make suggestions and propose law reforms (12.5%), have a professional conscience (9.4%), avoid corruption (6.3%), speak the truth (6.3%), be transparent (3.1%), and resolve all lawsuits (3.1%).

Some constraints and major challenges to implementing the rule of law post genocide are:[15]

1. Judging the large portion of the population involved in the violence and massacres of 1994 without sufficient human and material means, when so many have been in prison without judgment since then and others have yet to be found, arrested, and tried. To reestablish the primacy of law in Rwanda, the country must guarantee that justice is done in a timely manner that is fair and open to all, so as to respect the fundamental rights of genocide survivors and those accused perpetrators.
2. Rebuilding the social fabric destroyed by unprecedented acts of violence. In Rwanda, where population density is particularly high, victims and culprits must once again live next side by side.

[15] This list of major challenges results from documents and leadership reports of the GOR, MINIJUST, donor agencies, and NGOs that intervene in the system (BTC, USAID, CDDH, RCN, etc), and a synthesis of recent studies of the judicial system (Neher, Schotsman, Ssekandi, etc.), as well as considerations developed by surveys of high officials from MINIJUST, the Supreme Court, the Prosecutor General's office, the NCHR, and the National Judicial and Constitutional Commission.

3. Recognizing victims and validating their rights, even though reparations are purely theoretical at this point, given that most who would owe them are insolvent and that the means for forcible collection are, for all practical purposes, nonexistent. Put in place a compensation fund for genocide survivors and a system of remunerating them during and after court cases.
4. Ensuring collective participation in the Gacaca Jurisdictions so as to make them into a tool of social and national reconciliation, given the originality and complexity of the 10,604 Gacaca Jurisdictions, and the need to justly compensate more than 254,000 judges for their adjudication of more than 100,000 accused and handling of hundreds of thousands of witnesses.
5. Establishing and managing the Community Service system *(TIG)* as an alternative to imprisonment for those accused who confess their crimes.
6. Organizig and supporting a legal assistance fund to ensure adequate representation of indigent people.
7. Taking care of all other, non-genocide cases, both criminal and civil, currently in the classic judicial system, which is characterized by a lack of sufficient infrastructure for courts, tribunals, and prosecutor's offices, a lack of qualified judges and prosecutors, and underpaid judges.

Concerning the classic judicial system, the main challenges and constraints seem to be:

1. Raising the qualifications of most judges and prosecutors, as well as support staff (court clerks, police, and court bailiffs).
2. Increasing the number of court bailiffs, who execute judgments.
3. Capitalizing experiences sufficiently.
4. Rehabilitating infrastructures and improving material support to many prosecutor's offices, courts and tribunals (particularly canton courts).
5. Improving public opinion of judges and prosecutors, by offering a more attractive salary scale, fighting against corruption, valuing their work rather than placing an exaggerated emphasis on their lack of qualifications and corruption.
6. Processing cases of genocide suspects and identifying those 1st category detainees who cannot be dealt with in the Gacaca Jurisdictions.

1.4. Inherent needs for understanding the mission and policies of judicial system

Divergences in the understanding of the judicial system's mission between decision makers, players, stakeholders, and beneficiaries may become a source of serious misunderstanding in practice and results in deviations like slowness in the processing of cases and behaviors that undermine establishing the rule of law (corruption, re-arrests, refusals to execute judgments or to make available the necessary logistics) – all of which disregard the principle that only the law can serve as the ultimate reference and not unspoken ideas that may lead to arbitrariness. Yet system players permanently manipulate the texts stating the system's mission! From text to actions, a big step must be taken

What is missing is **the internalization, or personal and collective appropriation,** of the principles of the rule of law in a manner that makes them a permanent reference point, or **transcendental value,** in the approach to problem solving used by each player in the system.

Six steps are proposed to solve the situation:

1. Regular information, and sufficient dissemination of the mission statement and sectoral policies adopted by MINIJUST.

2. Seminars and workshops that target different components and dimensions of the fundamental principles of the judicial system linked to the rule of law and values that derive from them.
3. Explanation of the mission, in terms of objectively observable and verifiable objectives that can be used as tools to warn, follow and control the judicial system.
4. Using these principles to determine everyone's work objectives and to evaluate the quality and quantity of the work done.
5. Making contact with other environments where these principles are part of the tradition of judicial system players.
6. Corrective sanctions for deviant behavior.

As for the external players – donors and support organizations – the establishment of a mechanism for regularly exchanging information would permit a better understanding of the mission, policies, and the interpretation of both.

2. Description of the judicial system's main components

2.1. Components of the courts

The principle legal texts governing the organization of Rwanda's judicial system are:[16]

a) the decree-law of July 7, 1980, that instituted the code of judicial organization and competence, and the organic law[17] of December 6, 1995 which modified this organization to establish a military court;
b) the fundamental law that includes the Peace Accord of August 4, 1993, the Protocol Concerning the Rule of Law of August 18, 1992, the Protocol on Power Sharing of January 9, 1993, the Protocol on Various Questions and Final Dispositions of August 3, 1993, the Constitution of June 10, 1991, and various texts that complete or revise the 1991 Constitution, notably those of May 6, 1995 and January 18, 1996;
c) the organic laws of June 6, 1996 and March 29, 1996 on the organization, operation, and jurisdiction of the Supreme Court[18] and the Superior Council of Magistrates;
d) the laws of April 15, 1964, February 23, 1963, and August 8, 1977 that instituted the code of civil and commercial procedure, and codes of penal law and procedure; and
e) the organic laws (40/2000 of January 26, 2001 and 33/2001 of June 22, 2001) that created the Gacaca Jurisdictions and organized prosecution of the genocide and crimes against humanity committed between October 1, 1990 and December 31, 1994.

The core of Rwandan law governing the judicial system was inspired by Belgian colonial rule. Four levels of ordinary jurisdiction were established:

1. Canton Courts
2. Courts of First Instance
3. Courts of Appeals
4. Supreme Court

In addition, specialized jurisdictions have been added, such as the military jurisdictions (War Council, Military Court) and Gacaca Jurisdictions. Others may be created in the future.

2.1.1. Canton Courts (CC)

The Canton Court is a court of general jurisdiction of the first degree. Thus it hears both criminal and civil cases in their first pleading. Article One of the Rwandan Code of Judicial Organization and Competence stipulates that each prefecture (province) shall be divided into judicial cantons. It establishes a canton court in each of these communes (districts). Currently there are 106 canton courts. At least one president and three judges preside over each canton court, with the assistance of a court clerk and if possible, the central prosecutor's office. Its jurisdiction is limited to lawsuits concerning RWF 50,000 or less (approximately USD 100), and these decisions may be appealed to the next court level, the Court of First Instance (CFI). The canton courts are also the courts of last resort for small claims involving civil or commercial matters not exceeding RWF 1,000 (approximately USD 2).

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[16] F. REYNTJENS, J.GORUS, *Codes and Laws of Rwanda Vol. II: Procedure, organization and judicial competence. Political and administrative organization, social matters,* NUR & E. Bruylant, Butare and Brussels 1995.

[17] Organic laws are voted on by the Rwandan legislature and within the hierarchy of laws, rank just below the Constitution. These laws (versus ordinary laws) must be passed by a 3/5 majority (versus only an absolute majority for ordinary laws) and are intended to complete or specify constitutional provisions. W. SCHABAS & M. IMBLEAU, *Introduction to Rwandan Law* (Les Editions Yvon Blais, Cowansville, Canada, 1997).

[18] The law of June 23, 1963 governed the Supreme Court, before it was annulled in 1978.

All decisions are made under the "principle of collegiality," wherein three judges hear cases together, and write and sign their decisions as one body. This civil law approach contrasts with the single judge system found in most common law jurisdictions.

According to the chairman of the Supreme Court's Department of Courts and Tribunals, canton courts are under-utilized. This can be explained by two facts. First, their jurisdiction is very limited, and second, there is a traditional tendency for Rwandans to settle their small disputes through political authorities rather than judges.

According to the chairman of the Law Reform Commission, introduction of a single judge system and expanding the canton courts' jurisdiction to support other courts have been proposed in the Commission's project on reforming the laws of judicial organization and jurisdiction. These changes will also involve reinforcement of the capacity of public prosecutors and judges at this level.[19] The canton courts' current infrastructure, however, will not permit such a restructuring. Some CCs (such as the one at Bwakira) have cramped courtrooms, without benches. Furthermore, as a result of the 1994 war and genocide, most canton courts – largely located in the rural areas -- do not have courthouses.

2.1.2. Courts of First Instance (CFI)

Under the principle of double jurisdiction, the CFI hears appeals of canton court decisions while also serving as a court of original jurisdiction. It maintains jurisdiction over all civil and commercial cases valued at more than RWF 50,000 (approximately USD 100); demands that have an undetermined amount; family law; conflicts related to property matters; and criminal matters. This general civil and criminal jurisdiction is relatively broad, extending to all matters not reserved by other trial courts (such as the 2nd, 3rd, and 4th categories of genocide crimes, which are governed by the Gacaca Jurisdictions, and civil and commercial lawsuits whose value do not exceed RWF 1,000, which are heard exclusively by the canton courts). It is therefore understandable why these courts are inundated with cases.

The CFI is composed of a president and at least three judges, among which one or many vice-presidents are nominated.

There is a CFI in each province, except the Province of Kigali Rural, which has two. Thus there are a total of 13 CFIs organized under four courts of appeals (see table below). The President of the Republic may give the CFI as many specialized chambers as necessary (for example, a recent executive order created special genocide courts).

Court of Appeals	CFI
Kigali	Kigali Rural (Rushashi, Nyamata) City of Kigali, Byumba, Umutara, Kibungo
Nyabisindu	Gitarama, Butare, Gikongoro
Ruhengeri	Ruhengeri, Gisenyi, Kibuye
Cyangugu	Cyangugu

[19] See also the concept decree-law on the organization and judicial competence.

2.1.3. Courts of Appeals (CA)

As with the CFI, the principle of double jurisdiction permits the Court of Appeals both to review all CFI decisions on appeal and to hear limited cases of original jurisdiction. The law of May 7, 1985 (Official Gazette, 85, p.672) established four courts of appeals, as shown in the above table.

Each court of appeals may have as many specialized chambers as needed, with three members in each and a court clerk to assist. When a court of appeals does not have specialized chambers, it consists of a president, one or several vice-presidents, and as many judges as needed. Court of appeals judges (as well as those of other jurisdictions superior to it) are called "Councilors."

2.1.4. Supreme Court

The Supreme Court is the leading body of judicial power.

Article 26 of the Protocol on Power Sharing contained in the Arusha Peace Accord establishes the Supreme Court. The Supreme Court was originally organized under the law of February 23, 1963, then later annulled by the Constitution of December 24, 1978, with some functions transferred to the executive branch.

Per Article 29 of the Protocol on Power Sharing, the Supreme Court is comprised of a president and five vice-presidents, all of whom are chosen by the National Assembly from a list presented by the government on a two-person-per-position basis. Each vice-president is also the president of one of the six sections that currently make up the Supreme Court.

Today the Supreme Court is made up six departments:
1. the Department of Courts and Tribunals,
2. the Court of Cassation,
3. the Constitutional Court,
4. the Public Accounts Court,
5. the State Council, and
6. the Department of the Gacaca Jurisdictions, which was recently formed.

The duties of the Supreme Court are to:
1. Lead and coordinate the activities of the courts and tribunals of the Republic. This court is the guardian of judicial independence, and is solely responsible for professional ethics.
2. Guarantee the constitutionality of laws and decrees, which is why it reviews their constitutionality before promulgation.
3. Rule on appeals for nullification of administrative regulations, decrees, and decisions.
4. Regulate the referendum process.
5. Provide, on demand, advice on the lawfulness of draft presidential decrees, prime minister decrees, ministerial decrees, and other decrees for public administration.
6. Provide authentic interpretation of customary law, where there is an absence of written law.
7. Review appeals of lower court decisions and determine transfers of proceedings.
8. Resolve institutional conflicts among State entities.
9. Rule over all public service accounts.
10. Preside over court proceedings against the President of the Republic, the President of the National Assembly, the President of the Supreme Court, the Prime Minister, the

Vice-Presidents of the Supreme Court, the President of the Courts of Appeals, and Prosecutors and Attorneys in the Supreme Court and the Courts of Appeals.

Let us take a brief look at the Supreme Court's departments.

A. The Department of Courts and Tribunals

This department is not a jurisdiction and does not exercise any judicial power. It is instead an administrative section responsible for leading and coordinating the activities of Rwanda's courts and tribunals. It also guarantees the independence of the judiciary and therefore supervises the professional ethics of judges.

B. The Court of Cassation

Per Article 28 of the Protocol Agreement on Power Sharing, the Court of Cassation has the unique function of establishing Rwanda's positive law through review of lower court decisions. It does not judge cases or conflicts, but instead accepts the facts as found by the lower courts and ensures that the rule of objective law has been correctly interpreted and applied to them. It is headquartered in Kigali.

C. The Constitutional Court

Its role is to guard the constitutionality of laws and regulations, by giving advice on the constitutionality of laws, executive acts, and international agreements. All decrees and general regulations of public administration must be submitted to the Constitutional Court before promulgation.

D. The State Council

The State Council is administrative in nature. Its competence is focused on two areas: electoral matters and important questions of public administration.

E. The Public Accounts Court

This department rules over public accounts. It controls, on behalf of the National Assembly, financial and accounting management of national companies and parastatals involved in commerce and industry. It rules over accounts and judges them looking objectively if revenues and expenditures were managed according to legal texts. This court has been superseded by the Auditor General's Office for Public Accounts.

F. The Department of the Gacaca Jurisdictions

The Gacaca Jurisdictions were recently established because of the magnitude of the genocide prosecutions. This is a jurisdiction of popular participation, whose objectives are revealing what really happened during the genocide, speeding up trials, eradicating the culture of impunity, promoting national unity and reconciliation, empowering the Rwandan population that witnessed the atrocities to give accurate accounts, unveiling the truth, participating in the prosecution of suspected perpetrators, and solving problems according to the Rwandan culture.

2.1.5. Superior Council of the Magistrates (SCM)

The Superior Council of Magistrates governs all these jurisdictions. This entity is in charge of safeguarding judicial independence and managing a judge's career.

The Superior Council of Magistrates is made up of:

1. The President of the Supreme Court, who serves as the SCM's president;
2. The Vice-Presidents of the Supreme Court;
3. Two judges on the Supreme Court;
4. One judge from the Court of Appeals;
5. One Court of First Instance judge for each Court of Appeals jurisdiction; and
6. One Canton Court judge for each Court of Appeals jurisdiction.

The Superior Council of Magistrates must:

1. Decide on the appointment and dismissal of judges, as well as the general management of a judge's career (except for the President and Vice-Presidents of the Supreme Court);
2. Provide consultative advice, when requested, on projects concerning the status of judicial staff; and
3. Provide consultative advice, when requested, on all pertinent questions of judicial administration.

2.1.6. Judicial Staff

Under Rwanda's civil law system, *magistrats* are divided into two categories: sitting magistrates, called judges in common law systems, and standing magistrates, who are prosecutors that represent the government.

Sitting magistrates pass judgment, preside over court proceedings according to the law of procedure, and institute arrest. In their mission, sitting magistrates take advantage of wide independence. The independence of a sitting magistrate guarantees justice to those tried. It is administered in conformity with the constitutional principle of separation of powers because judges neither receive orders nor wield legislative or executive powers.

The judicial staff includes both career magistrates and auxiliary magistrates. Sitting career magistrates devote their entire time to judicial functions and generally develop a magistrate career. Sitting auxiliary magistrates, in contrast, are nominated but not on a permanent basis. Instead they temporarily preside over specialized jurisdictions and continue their pre-nomination functions. The code of organization and judicial competence recognizes only two categories of auxiliary magistrates: advisors to the Military Court and presidents and judges of the War Council. These magistrates are subject to the professional codes governing career magistrates when they exercise such functions.

2.2. Components of standing magistracy

Standing magistrates are not judges but rather guardians of public law and order. Their mission is to prosecute primarily criminal cases, but they occasionally pursue civil matters. In the latter, these public prosecutors act in all cases where the law permits intervention, notably where public order is concerned. In penal matters, standing magistrates investigate possible breaches of law, receives complaints and denunciations, initiates acts of instruction, and refers matters to the courts.

2.2.1. Organization of hierarchy in the Public Prosecutor's Office

Although public prosecutors are organized under MINIJUST, the Ministry cannot substitute other department officials to take their place. MINIJUST cannot indict a culprit, investigate cases, argue them before the courts, nor mete out sentences. It cannot so use the ministry's multiple functions of maintaining law and order; these prerogatives are exercised only the magistrates.

2.2.2. Different types of magistrates in the Prosecutor's office

As with judges, there are two categories of standing magistrates, namely standing career magistrates and standing auxiliary magistrates.

Standing career magistrates are permanent judicial staff who are governed by the magistrates' by-laws and make their job a career. They include:

1. the Prosecutor General and Lead Counsel of the Supreme Court;
2. the Prosecutors General, Lead Counsels and Deputy Public Prosecutors of the Prosecutor General's Office; and
3. the State Prosecutors and Deputy Public Prosecutors of the State Prosecutor's Office.

Standing auxiliary magistrates, also known as OPJ, are officials empowered to make arrests. They are explicitly designated by the Ministry of Justice to serve as public prosecutors in the canton courts. It is important to remember that standing auxiliary magistrates are subject to their main previous functions and will be subject to the standing career magistrates' by-laws only when they exercise their prosecutorial functions.

2.3. Principle of judicial independence

In modern public laws, the judiciary is generally prevented from getting involved in political activities that interact with executive and legislative authorities. Instead it is confined to its juridical functions, which consist of passing judgment in court cases through application of regulations and laws. The judiciary's role is to ensure the protection of individual freedoms and rights, and to mitigate conflicts between public and private entities.

Among the judicial staff, judges speak with all of the independence that the law and their conscience accord them. Only other judicial institutions appointed by law may review their decisions. Decisions must be executed within established deadlines and modalities. This also applies to public prosecutors, who prosecute cases according to established legal procedures.

The guarantee of judicial independence is a fundamental principle of any society established on a regime of legality and primacy of law. Article 86 of Rwanda's Constitution of June 10, 1991 provides that *"the judiciary is exercised by the courts and tribunals and other jurisdictions. It is independent from the legislative and executive authorities. The President of the Republic is the guardian of the judiciary."* Article 25 of the Protocol on Power Sharing declares that the judiciary is independent from executive and legislative authorities. This principle began implementation applied after genocide, notably with the establishment of the Supreme Court.

The independence of the judiciary, however, results from many interacting factors. That is why it is important to have a broad overview of the working environment, which in turn aids in examining what players and beneficiaries think about the judicial system and the independence of the judiciary.

3. Inventory of the judicial system's functions

The war and genocide not only destroyed the judicial system that was already deteriorating under a long dictatorship, but also created a judicial conflict without precedent in human history: 100,000 inmates suspected for having participated in the genocide. With the help of many cooperation partners and NGOs, significant progress has been made in achieving some rehabilitation and capacity building of the judicial system.

This chapter provides a comprehensive inventory of the Rwandan judicial system. A brief review of major system constraints will be followed by inventory data on the following aspects of the Rwandan judicial system:

- Overall organization
- Human resources
- Financial resources
- Infrastructure
- Judicial independence

3.1. General problems facing the judicial system

High-ranking officials of the judiciary and of MINIJUST indicated the following main problems:[20]

1. The genocide conflict far surpasses the capacity of prosecutor's offices, courts, and tribunals;
2. This conflict requires resources beyond the GOR budget (Gacaca Jurisdictions, processing of 1st and 2nd category cases), and is more complex, especially with group trials sometimes surpassing 100 co-accused;
3. Increased criminal activity in certain categories (sexual violence, economic crimes, juvenile promiscuity);
4. Slowness of investigations and trials, requiring longer pre-trial detentions, resulting mostly from its form and obsolete procedures;
5. Problematic execution of judgments (in the genocide cases, due to imposition of the death penalty and the large number of concerned persons, while in other cases of general jurisdiction, due to the lack of logistics or just because of poverty);
6. Lack of compensation for genocide victims;
7. Magistrates lacking specialized knowledge, and often even insufficient general knowledge (for the majority are either non-lawyers or young lawyers with little familiarity with legal practice);
8. Lack of judicial independence;
9. Limited access to justice (due to limited jurisdictions of nearby courts, high court and lawyers' fees relative to the meager incomes of most people, lack of legal assistance for poor people, and lack of information about the system);
10. Poorly defined hierarchical relationships between the Prosecutor General for the Supreme Court and prosecutors at lower levels;
11. Accountability of courts, tribunals, and prosecutors that is poorly conceived and insufficiently defined by law;
12. Inadequate budget in comparison to the need for justice, and a noticeable lack of materials and equipment, especially in the field;
13. Lack of supervision of magistrates, insufficient wages compared to the high cost of living, low value placed on the work of magistrates (particularity seen in publicity about suspected corruption cases and the low level of training);

[20] The first eleven were mentioned by departments of MINIJUST.

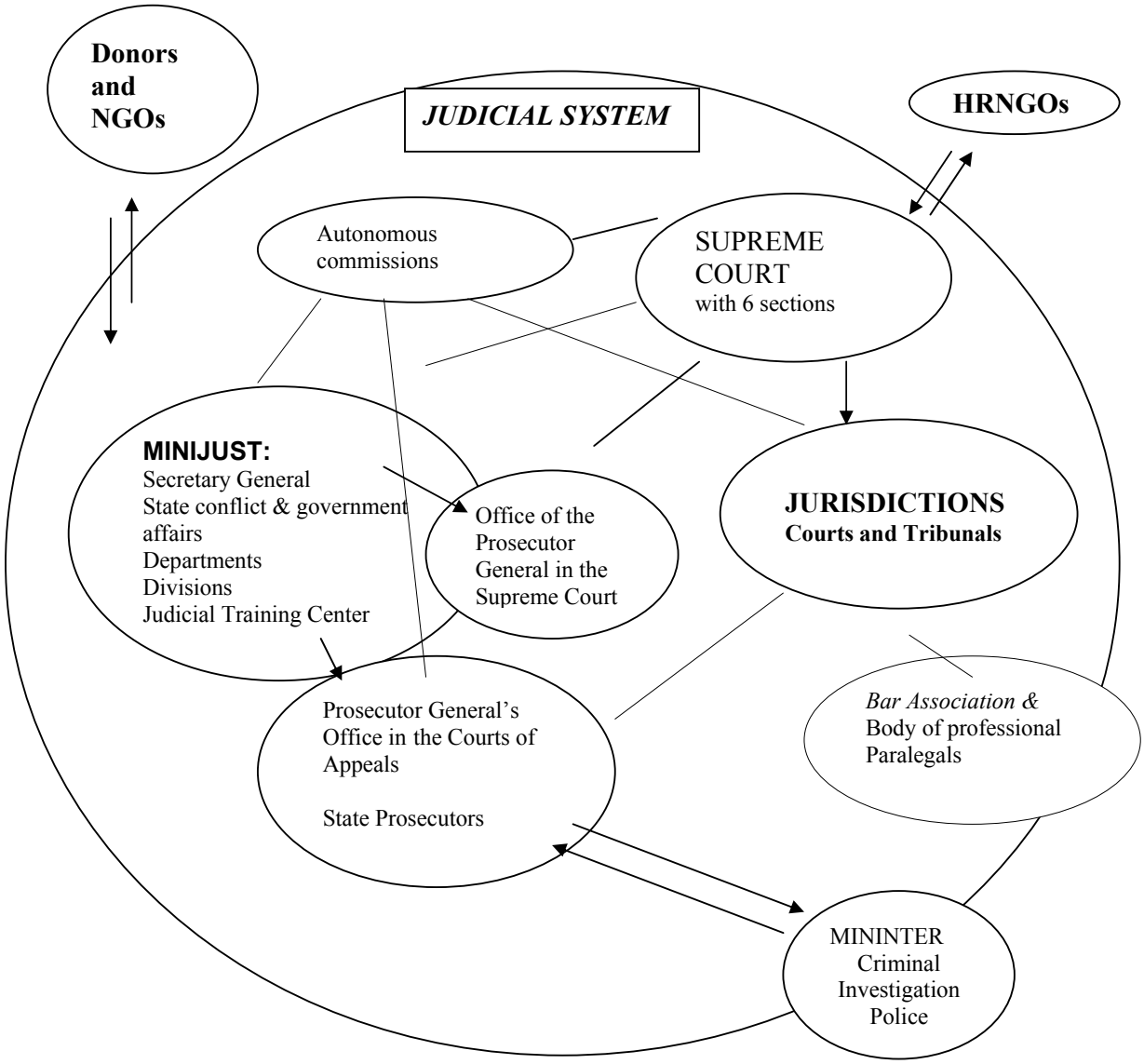
14. Corruption, which is a problem for the entire society, not just the justice system (for it is not an island);
15. Weak organization and planning skills;
16. Difficult structures for the promotion of judges;
17. Lack of local publications and analyses of texts as training tools, with few people capable or available to publish and analyze judicial precedent and texts;
18. Social and professional behavior that does not conform to professional ethics; and
19. A culture of impunity that is deeply ingrained in the population, as exhibited by hiding crimes and ignoring fundamental human rights and obligations.

3.2. Organization of the judicial system

The Rwandan judicial system is made up four distinct structures which are interdependent:

- MINIJUST
- Courts and Tribunals
- Prosecutors' Offices
- Criminal Investigation Department (CID)

An examination of the system's organization demonstrates that the Executive branch directly governs some structures, while the Judiciary branch governs others. The Executive supervises MINIJUST, the Prosecutors' Offices, and the Police while the Judiciary supervises all courts and tribunals. It was revealed to us that the hierarchy between these institutions is currently under study, given ongoing reform initiatives. The following diagram tries to illustrate the relationships between these entities.



Generally, MINIJUST's administrative organization resembles any other government ministry structure. It is made up of a General Secretariat, four departments, and ten divisions.

In addition, there is department called "State Conflicts and Government Affairs" which is under the Minister, as well as the National Center for Judicial Training which is directly attached to the Secretary General. This center is becoming a parastatal. Within MINIJUST, there are autonomous commissions created to accomplish specific missions, like the Legislative Reforms and Judicial Commission. Consolidation of data collection and dissemination will reinforce planning capacities and program coordination of the Ministry.

The Prosecutor's Offices of the Courts of First Instance, as well as the Prosecutor General Offices of the Courts of Appeals, are organized hierarchically under MINIJUST, without going through the Prosecutor General Offices of the Supreme Court (except for genocide cases). The judicial reform presently in progress should, according to information obtained during this study, unify administration of the various prosecutors' offices to ensure vertical coordination between them.

The Criminal Investigation Department (CID) is, by statute, organized under the National Police, which is an entity of the Ministry of Interior (MININTER) but functions alongside State Prosecutors, who are under MINIJUST. The CID operates in a sort of double structure, with all the potential attendant problems of unified direction. However, there is a perceptible advantage to this arrangement: the CID thus possesses effective means of prosecuting crimes and searching for criminals (an armed force and rapid communication means), which the Prosecutors Offices do not always have. Officials of the National Police and Prosecutors' Offices did not mention any problems related to this arrangement.

The judiciary is organized with the Supreme Court at the top (divided into six sections, as mentioned earlier) and under it, the Courts of Appeals, followed by the Courts of First Instance and the Canton Courts. The assessment revealed that each jurisdiction maintains complete autonomy over judicial functions.

Two other major concerns about judicial system operations came out during interviews with various partners:

1. The communication network between the different entities still experiences many problems. The Management Systems Development (MSD) NGOs and GTZ are working together to develop a computer system that will facilitate communication.
2. The effective use of players' experience in the judicial sector remains very weak. The Belgian Technical Cooperation (BTC), in conjunction with NGOs like ASF, is developing a support system for producing tools to address this problem, such as publication of a bulletin on Rwandan jurisprudence, as well as a related CD-ROM.

Organization Chart of MINIJUST

3.3. Human resources of the judicial system

3.3.1. Analysis of judicial staff qualifications

Following the 1994 war and genocide, many magistrates and support staff were either dead or in exile. Considerable progress has been made to rebuild this body of magistrates and support staff. The following table shows staffing trends from the end of 1995 until August, 2002.

Table 1: Staffing trends of magistrates (all levels) and support staff

Profession	Period	Bachelors Degree (law)	Other training	Total	Observation
Prosecutors	End 1995	6	13	19	*See NB*
	August 2002	66	230	296	
	%/Growth rate	*1 000*	*1 669*	*1 458*	
Judges	End 1995	9	42	51	
	August 2002	67	655	722	
	%/Growth rate	*644*	*1 460*	*1 316*	
Lawyers	August 1997	43		43	
	August 2002	96		96	
	%/Growth rate	*123*		*123*	
Paralegals	August 1997				*See NB*
	January 2001			94	
Court bailiffs	End 1995		9	9	
	August 2002		26	26	
	%/Growth rate		*189*	*189*	
Court clerks	End of 1995		81	81	
	August 2002		326	326	
	%/Growth rate		*302*	*302*	

NB: - All *prosecutors* were deputy public prosecutors or assistant prosecutors before the war
- 43 inspectors of CID received an accelerated training in August 1995.

Source:1. RCN: *Overview of the judicial system. Rwanda-December 1995, Ed. RCN*
2. MINIJUST, *Department of administration of justice-prosecution administration Aug.2002*
3. Bar Association of Kigali, *Lawyers House, Evolution of number of lawyers since their first of oath till August 2002*

Magistrate qualifications have improved at a rapid pace: a 1000% increase in legal training for prosecutors and 767% for judges. Given the number of cases resulting from the war and genocide, and the concomitant decrease in judicial staff, the requirement that prosecutors and judges possess a first degree in law was temporarily lifted. This permitted non-lawyers to become magistrates. The National Center for Judicial Training (NCJT) conducted training sessions with 2,180 judicial workers from 1997 to 2001. The NCJT was physically rehabilitated thanks to donors like the BTC.

Progress was also remarkable for the judicial support staff, albeit in a very modest way. This slow improvement nonetheless creates a burden for support staff, especially in the prosecutor's offices and the courts and tribunals. That is why we noted that magistrates often must perform tedious administrative tasks, given both the low numbers of staff and their serious under-qualification, as the chairman of Department of Courts and Tribunals confirmed.

The problem is particularly acute for court bailiffs. Their role is to execute the courts' judgments. Rwanda as a whole had only 26 court bailiffs in 2002, among which 19 worked for the 13 CFI (106 CCs) and 7, for the Courts of Appeals. This seems particularly substandard and corroborates the opinion of litigants and magistrates that judgments are poorly executed, even when this responsibility is also legally given to the

district heads. Law No. 31/2001 of June 12, 2001 provides one solution to this problem, by creating and organizing a professional association of court bailiffs.

All players, interveners, and beneficiaries in the judicial system deplored the under-qualification of magistrates and support staff. The following tables provide a picture of the composition and general qualification of the core staff on which the mission of the judicial system relies.

Table 2: Qualification of judges (sitting magistrates) as of August 1, 2002

	Supreme Court	**Court of Appeals**	**CFI**	**CC**	**Total**	**%**
At least a degree in law	23	12	32	0	67	*9.1*
Associate degree in law	0	1	2	2	5	*0.7*
Diploma degree in law	0	1	5	0	6	*0.8*
Degree in another field	0	4	0	1	5	*0.7*
Associate degree in another field	0	2	19	1	22	*3.0*
Diploma degree in another field	0	1	5	0	6	*0.8*
Training D7	0	0	3	12	15	*2.0*
Training D6	0	5	93	282	380	*51.8*
Training D5	0	0	2	49	51	*7.0*
Training D4	0	1	4	31	36	*4.9*
Training S6	0	0	3	22	25	*3.4*
Training S5	0	0	2	20	22	*3.0*
Training S4	0	0	2	18	20	*2.7*
Training S3	0	0	2	26	28	*3.8*
Training S2	0	0	1	34	35	*4.8*
Training S1	0	0	0	6	6	*0.8*
Primary training	0	0	0	4	4	*0.5*
TOTAL	**23**	**27**	**175**	**508**	**733**	***100.0***
Synthesis						
Qualified (at least having a degree in law)	23	12	32	0	67	*9.1*
% according to the total per category	*100.0*	*44.4*	*18.3*	*0.0*	*9.1*	
Qualified (at bachelors' and associate degree levels in another field)	0	9	31	4	44	*6.0*
Absolutely under-qualified	0	6	112	504	622	*84.9*

Source: MINIJUST, Department of Administration, August 2002

Almost 10% of judges (67 out of 733, or 9.1%) have received appropriate training (minimum is a LLB degree), which permits one to think that they know enough to interpret the law. But the vast majority of these well-trained judges are located in the upper courts. Thus the overall trend toward under-qualification increases in the courts which most people use. For example, none of the 508 judges in the canton courts studied law at a university.

That is why a project to reinforce the jurisdiction of canton courts must be accompanied by intensive training of the judges at this level. In so doing, Rwanda would avoid the present situation of citizens looking for competent judging to resolve disputes and not consistently finding it. Otherwise, the population may resort to other means, like violence.

It is also worth mentioning that even those who are qualified (i.e. having a bachelor's degree in law) are in most cases recent graduates from NUR's law faculty. As it has been seen worldwide, such young, inexperienced graduates need time to learn from experienced magistrates, so as to develop their practice as well as learning how to conduct hearings and apply rules of procedure, find facts, and control the courtroom.

Due to pressing needs, young graduates are given responsibilities right away that, not surprisingly, surpass their maturity level -- making them qualified on paper but less so in practice. This creates a real need for continuing legal training, as all categories of interviewees remarked.

The prosecutor's office staff seems to be relatively well qualified, when compared to personnel from the courts and tribunals.

Table 3: Prosecutor's office staff, as of July 2002

	Number	**Percentage**
At least a law degree	66	22.3
Non lawyers	230	77.7
TOTAL	296	100

Source: MINIJUST, Department of Administration – Division of Administration of Prosecutors' Office, July 2002

There are currently 296 public prosecutors who investigate and prosecute the more than 100,000 genocide cases that are pending. When new cases are added in, one quickly notices that their number is relatively small compared to the size of the task before them.

The qualifications of prosecutors are significantly better than those of judges, with twice as many prosecutors having law degrees. This leads to a dramatic paradox for citizens: one can observe in court proceedings that judges as a group are not as conversant in legal matters as the prosecutors appearing before them -- or sometimes, even the accused.

One could ask why this lack of qualified staff exists seven years after the NUR faculty of law restarted its activities.[21] In fact, the NUR faculty began to train and graduate law students immediately after the genocide, in 1995. Below are the graduation statistics of the NUR Faculty of Law during the post-genocide period:

Table 4: Number of graduates from the faculty of law since 1995

Year	**Graduates**
1994-95	19
1995-96	19
1996-97	51
1997-98	109
1998-99	Disruption
1999-00	110
2000-01	99
Total	**407**

Source: Dean's Office, Faculty of Law, NUR, July 2002

Taking into account judges, prosecutors, and MINIJUST officials who have at least a degree equal to the bachelor's degree in law, we have found that there is a total of 133 lawyers working directly in the judicial system, most of whom graduated from the NUR after the genocide. Given the overall graduation numbers during this period, this means that most graduates prefer to enter legal sectors other than the magistrature.

[21] It is important to note that other private universities in Rwanda offer a law degree (ULK, etc). These institutions, however, have not yet produced law graduates.

Why does the magistracy not attract many young graduates? Salary conditions are the most unattractive factor. Not only does the compensation plan offer a meager salary, but general working conditions, location, and working tools are less attractive compared to other professional opportunities. With respect to the low salary scale, judicial salaries are in line with those of other government employees, but do not take into account the weight of the position's responsibilities and the exposure to corruption and influence peddling. Judicial salaries range from 250,000 RWF (about USD 500) for a Supreme Court judge, 150,000 RWF (about USD 300) for a president of the Court of First Instance, 50,000 RWF (about USD 100) for a CFI judge, and 22,000 RWF (about USD 44) for a Canton Court judge. The level of education is not taken into account in the salary scale. In addition to the net salary, compensation includes housing and transportation allowances.

Most of the current magistrates come from the UNR. It is noticed that gradually, the experienced personnel tend to leave the magistracy and start their own firms or work as in-house counsel. Their reasons for leaving are similar to those the young graduates have for not entering. Yet these experienced lawyers could help to train and supervise the young graduates who begin their career in the magistracy.

Among the three main sectors of the judicial system (MINIJUST, Prosecution, Courts and Tribunals), judges (the sitting magistracy) is the least attractive option. The Superior Council of the Magistrates (CSM) that handles the **magistrates' career** was created by law No. 3/96 of March 29, 1996 and is recognized by the Arusha Peace Accord. The CSM nominates judges and manages their careers, deciding on disciplinary sanctions to take and giving advice on the status of the judicial staff and administration of justice. Such an arrangement should reinforce judicial independence and assure transparent management of an individual's career. However, high-ranking officials that were contacted and magistrates themselves deplored the de-motivating slowness in promoting judges, compared to their colleagues in prosecution and MINIJUST. One of the reasons they offered was that the SCM decides on the promotion and transfer of judges, and this results in too many problems organizing meetings. Further, these meetings often do not have promotion issues on their agenda.[22]

Another reason that discourages young lawyers from becoming judges is the slow pace of promotion. Compared to their colleagues in the prosecution, who are regularly promoted, judges take long to be promoted or transferred. It is hoped that this issue of motivation will be seriously addressed in the current judicial reforms.

As for the MINIJUST staff (excluding the prosecution offices), we generally notice that qualified staff occupy positions of responsibility, because most are law graduates. But given that some responsibilities require other, specialized qualifications (e.g. logistics, human resources management, planning), shortfalls may appear when implementing the main tasks of the Ministry.

Continuing education that reinforces Ministry capacities can give best results if its beneficiaries have basic education that is well targeted to their job responsibilities. An effort is currently being made to narrow the gap between job qualifications and personnel qualifications.[23]

[22] A law to reform the Superior Council of the Magistrates has not yet been presented to the parliament.
[23] MINIJUST, *Framework of the Ministry of Justice and Institutional Relationships as of March 30, 2001,* April 18, 2001

Table 5: MINIJUST: Current staff as of July, 2002

I.	Government staff	Total	Percentage
1	AO Law	26	32.9
2	A1 Law	0	0.0
3	A2 Law	5	6.3
4	A0 other field	9	11.4
5	Bachelor's degree, other field	0	0.0
6	Associate degree, other field	1	1.3
7	A1 other field	5	6.3
8	A2 other field	28	35.4
9	A3 other field	1	1.3
10	Training D7	1	1.3
11	Training D5	3	3.8
	TOTAL government staff	79	100.0
II.	**Contractors**	13	
III.	**Part-time contractors**	18	
IV.	**Projects staff**	13	
	TOTAL of staff	123	

Source: Department of General Services-Division of Human Resources Management, August 2002

3.3.2. Training perspectives

The question of providing training to magistrates as a solution to under-qualification was on the minds of interviewees in all categories. The following needs were mentioned by judges and prosecutors, lawyers, members of the Bar Association, and those from civil society.

For magistrates and lawyers who are law graduates, they are interested in study tours, seminars, continuing legal training in: - Law practice - Pleading techniques - Interpretation of legal texts and the law of evidence - Investigation techniques - Social communication	- Political science - Specialized law disciplines - Editing judicial acts - Computers - Behavioral science training - Languages (English for the Francophones and French for the Anglophones)
For magistrates and paralegals who are graduates in fields other than law - University training in law - Training in computers	- Internships and study tours - Professional code of conduct and ethics
For magistrates and defendants who have not attended university: - Law degree studies - Training in computers - Pleading techniques - Social communication	- Editing judicial acts - Judicial methodology - Professional code of conduct and ethics - Political science

These needs have been taken into consideration for human resource management purposes when planning, programming, and implementing training activities in the judicial sector.

One of the human resource management issues is to coordinate continuing legal training of magistrates with the continued processing of cases.

The National Center for Judicial Training (NCJT) possibly provides an answer to this problem. This Center was created in 1963 and operates in Nyabisindu. It is under the direct supervision of the General Secretary of MINIJUST, and is directed by a magistrate designated by the Supreme Court. NCJT was expanded and rehabilitated in 1995 with

the help of the Swiss Cooperation. The BTC has actively supported its operations since 1997 and other donors have provided funding for various trainings.

A reform project intended to make this center autonomous is in the process of being finalized. A training plan was progressively developed to address the need of producing truly qualified professionals in the judicial sector. The main objective is to offer a large selection of trainings on different themes, thereby enabling all members of the judicial corps to adapt to current requirements and to increasingly technical and specialized needs.

The targeted groups include:

- Graduates from law school who must acquire a professional training essential for practice;
- Magistrates who are not lawyers by profession but who have acquired certain professional experiences and who now need a solid legal base to permit them to serve the justice system more effectively; and
- Law enforcement officers, court clerks, and secretaries of the prosecutor's offices, whose work complements that of the magistrates.

To best coordinate with the NCJT, training participants are designated by the heads of jurisdictions and prosecutors' offices, and are confirmed by the President of the Supreme Court, MINIJUST, and the President of the Department of Courts and Tribunals. Since May, 1997, 46 different seminars have been organized over a total of 747 days for 2,180 participants (sitting and standing magistrates, court clerks, secretaries, inspectors of CID, military magistrates, etc).[24]

To consolidate the performance of this Center, modification of its by-laws is needed in order to transform it into an autonomous institution that will be called the National Center for Training and Judicial Development. Its new institutional framework will allow consultation between partners in training, and help this center to fulfill its mission of increasing the qualifications of judicial personnel, contributing to the specialization of chambers and jurisdictions, and disseminating laws and their documentation. Donors, especially the BTC, support this reform.

3.4. Physical infrastructure of the judicial system

The judicial system's physical infrastructure was heavily damaged during the war and genocide, and all tools and materials were either destroyed or looted. Considerable efforts were made to rehabilitate and equip at least most courts, mainly by donors and NGOs.

At the central level, MINIJUST and the other top judicial institutions (the Supreme Court and Prosecutor General in the Supreme Court) have decent buildings that were either rehabilitated (Supreme Court and MINIJUST) or newly constructed (Prosecutor General). Space, however, is insufficient to accommodate all departments needed for normal operation. Four to five staff share the same office, and documents are not well kept. Office equipment, thought, is relatively sufficient.

The Department of Gacaca Jurisdictions, located in the city center, is not only far from the Supreme Court and disconnected from its other departments, but it is also housed in a cramped and inappropriate facility compared to its mission. The physical rehabilitation of the Supreme Court is not complete enough to allow the Gacaca Jurisdictions to carry out its mission properly.

[24] M. Schotsmans, *Justice sector support system mission in Rwanda,* Dutch Embassy-Kigali, March 2001.

There is a lot to be done for the Courts of Appeals, Prosecutors of the Courts of Appeals, Courts of First Instance, State Prosecutors, and Canton Courts, given the enormous needs. Many buildings are in a bad shape, beginning with the State Prosecutor's Office of the CFI of Kigali. According to some reports we consulted, the judicial staff's difficult working conditions -- including cramped offices, office equipment that is frequently broken and without maintenance, and frequent lack of office supplies -- are present in many provinces.

Typical examples in the sites where we conducted our survey include:

- At the CFI and Prosecutor's office in Kibuye, magistrates must work in a sort of cubicle that serves as offices, which does not allow them to receive those to be tried. These litigants thus must explain their cases through the windows. This is also the case in the CFI of Butare, Canton Court of Mabanza, etc.

Mabanza Canton Court –In order to talk to the court clerk, litigants must speak through the window.

- In the prosecutors' office of Birambo and the Canton Court of Bwakira, court cases cannot be securely filed due to lack of space and inadequate furniture; the court secretary has only one very old typewriter and keeps hundreds of these court files. Elsewhere where we visited during our survey, some CFIs have a computer, a printer and one or two typewriters, or sometimes a faulty photocopier. In some places, computers are not used because of lack of training, supplies, and maintenance.

- The courtrooms in the canton courts are not well equipped, with a poor setup of seats and sometimes, even without benches (like in Birambo).

3.5. Financial resources and donors' contribution

3.5.1. Financial support by the government

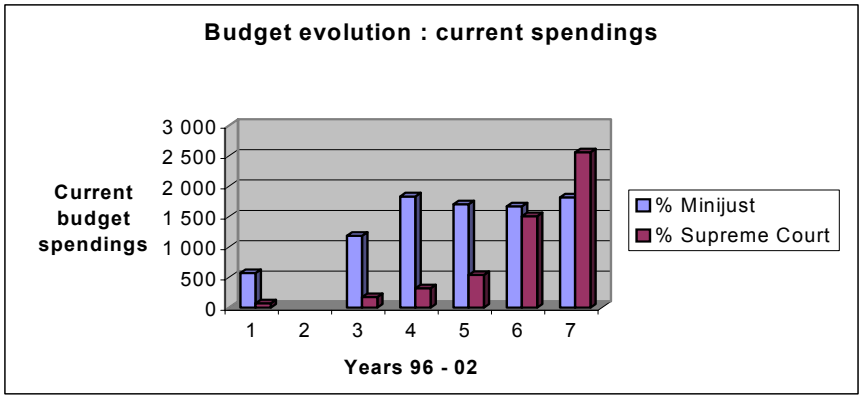
An analysis of various budgetary laws provides a comprehensive picture of budget allocations to important components of the judicial system.

Table 6: Budget of some main components of the Judicial System (in millions of RWF)

I. Current spending													
	Spending of the GOR	MINIJUST				Supreme Court				National Police & CID		Prisons	
	Total amount	Total amount	% MINIJUST	Salaries & contributions	% salaries	Total amount	% Supreme Court	Salaries & contributions	% salaries	Total amount	% Police	Total amount	% Prisons
1996	54,829.3	569.5	**1.0**	363.7	63.9	72.0	**0.1**					1,367.8	**2.5**
1997													
1998	77,730.7	1,184.1	**1.5**	634.3	53.6	175.4	**0.2**	76.0	43.3			2,303.4	**3.0**
1999	98,553.5	1,831.9	**1.9**	1,492.7	81.5	316.4	**0.3**	147.1	46.5			1,702.5	**1.7**
2000	99,064.7	1,703.9	**1.7**	1,391.9	81.7	539.2	**0,5**	215.5	40.0	2,264.2	**2.3**	1,254.1	**1.3**
2001	114,817.0	1,669.4	**1.5**	1,153.8	69.1	1,508.0	**1.3**	203.1	13.5	2,901.4	**2.5**	1,724.5	**1.5**
2002	142,441.3	1,815.2	**1.3**	1,362.6	75.1	2,562.0	**1.8**	274.2	10.7	3,421.7	**2.4**	2,173.7	**1.5**
Total 98-02	**532 607,1**	**8,204.5**	**1.5**	**6,035.3**	**73.6**	**5,101.1**	**1.0**	**916,0**	**18.0**	**8,587.3**	**1.6**	**9,158.3**	**1.7**
II. Capital spending/ Development budget													
1996	77,418.6												
1997	108,343.6	2,846.6	**2.6**										
1998	92,918.9	3,819.7	**4.1**										
1999	71,150.1	3,565.9	**5.0**										
2000	65,943.8	3,409.9	**5.2**										
2001	56,835.0	2,393.3	**4.2**			1,763.3	**3.1**						
2002	56,400.0	2,472.6	**4.4**			381.2	**0.7**			120	**0.2**	919.7	**1.6**
Total 97-02	**451,591.3**	**18,508.0**	**4.1**	**0.0**	**0.0**	**2,144.5**	**3.8**						

Source: Budget and finance laws of 1996, 1998, 1999, 2000, 2001 & 2002. The budgetary law of 1997 was never published. Data on capital expenditures for the year of 1997 was extracted from a summary table used in the1998 budget.

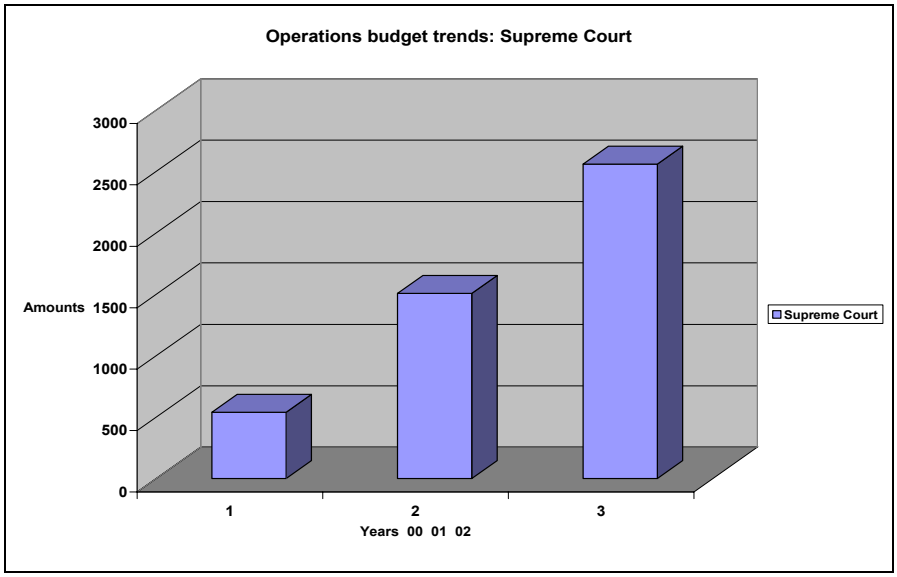
The following graph shows some aspects of the judicial sector's budgetary trends, especially relative to the share allocated to MINIJUST and the Supreme Court.



The most favorable year, when MINIJUST received almost 2% of the national budget, was 1999. The operating budget of the Supreme Court has experienced a remarkable increase during the past few years, while that of the Police and MINIJUST have tended to decrease. The creation of Gacaca Jurisdictions in 2001 led to a sizeable increase in the Supreme Court's capital and operating expenditures.

Table 7: Share of the Gacaca Program in the Supreme Court Budget (in millions of RWF)

Year	Spending on operations	Share of the Gacaca program	%	Capital spending	Share of Gacaca	%
2000	539.2					
2001	1,507.9	1,147.8	76.1	1,763.3	1,600	90.7
2002	2,562.1	1,994.4	77.8	381.2		



It is paradoxical, however, that at the time when the Gacaca Jurisdictions were established, capital spending for the Supreme Court was decreased from USD (in

thousands) 1,763.3 to 381.2. Yet to make this program successful, it is going to require significant administration to put it in place, as well as an ongoing management infrastructure (coordination of jurisdictions, judges, prisoners, and witnesses; organization of hearings; dissemination of information; and maintenance of relationships with the prisons, police, tribunals, local authorities, and administrators of community service).

The Gacaca Jurisdictions is practically one of the biggest -- if not the biggest -- programs undertaken in Rwanda and even in all of Central Africa in the judicial sector. However, in the course of 2001, this program was essentially limited to big start-up preparations: creation of the enabling law, sensitization, election of judges, and setup of the Department of Gacaca Jurisdictions at the Supreme Court. Controlling for an outstanding balance allows for a fuller understanding of this drastic reduction (78%) in the allocated budget for 2002.

The increases in budget spending for Supreme Court operations sends a good signal about the GOR's willingness to establish judicial power. Further, the GOR is in the process of providing the Supreme Court with autonomous entities for managing its resources (human, material, and financial). For example, it has just created a Secretary General for that institution.

The capital expense budget for the MINIJUST is more substantial than its current spending. In fact, it merely quotes the contribution of all donors. In many cases, these funds are allocated in an indistinct manner between MINIJUST and the Supreme Court. To the extent that infrastructures were destroyed by the war, it is logical that capital investment forecasts are much higher than those for operations.

However, closer examination of donor funding indicates that an important portion of these funds is being reintegrated into the Ministry's and the Supreme Court's operating budgets, through budget line items commonly referred to as "operations support," "budget support," and "institutional support," according to donors.

3.5.2. Financial support by donors

A. Capital support

Donors have greatly contributed to the reconstruction of Rwanda's judicial system. The GOR's capital expense budget corresponds to the donors' financial support for MINIJUST and the Supreme Court. The following table shows donors and their contributions.[25]

[25] We were not able to obtain all desired information with necessary precision. Thus these contributions should be read as providing the general trend in budgetary spending on the judicial system.

Table 8: Donor support, as indicated in GOR budgets of 1999-2002 (in millions of RWF)

Donors	Year	*Building*	*Institutional Support*	*Human Resources*	*Judicial Assistance*	*Jud.Proced &* Genocide	*Gacaca*	*Penitenciary*	*Documentation*	*Gen.sup Rule of law*	*Total*
EU	1999	400.0	400.0					100.0			900.0
	2000		135.8								135.8
	2001	293.9					1,600.0			360.3	2,254.2
	2002	899.7								631.1	1,530.8
	Total	**1,593.6**	**538.8**	**0.0**	**0.0**	**0.0**	**1,600.0**	**100.0**	**0.0**	**991.4**	**4,820.8**
Belgium	1999		150.0	75.0							225.0
	2000		212.0								212.0
	2001		25.6								25.6
	2002									444.0	444.0
	Total	**0.0**	**387.6**	**75.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**444.0**	**906.6**
Holland	1999	277.1						400.0			677.1
	2000							400.0			400.0
	2001										0.0
	2002										0.0
	Total	**277.1**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**800.0**	**0.0**	**0.0**	**1,077.1**
Canada	1999		440.0								440.0
	2000		250.0								250.0
	2001		310.2								310.2
	2002		210.4								210.4
	Total	**0.0**	**1,210.6**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**1,210.6**
USA	1999									330.0	330.0
	2000		162.5							1,000.0	1,162.5
	2001		247.1								247.1
	2002		205.9								205.9
	Total	**0.0**	**615.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**1,330.0**	**1,945.5**
France	1999									67.5	67.5
	2000									67.5	67.5
	2001									82.4	82.4
	2002									48.3	48.3
	Total	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**265.7**	**265.7**
Norway	1999	332.9									332.9
	2000										0.0
	2001	206.6									206.6
	2002							300.0			300.0
	Total	**539.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**300.0**	**0.0**	**0.0**	**839.5**
Denmark	1999			83.8	317.7						401.5
	2000			86.8	417.7						504.5
	2001										0.0
	2002				94.2						94.2
	Total	**0.0**	**0.0**	**170.6**	**829.6**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**1,000.2**
Germany	1999	180.0									180.0
	2000	180.0							792.0		972.0
	2001								195.8		195.8
	2002		165.8								165.8
	Total	**360.0**	**165.8**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**987.8**	**0.0**	**1,513.6**
UNDP	1999										0.0
	2000										0.0
	2001	52.8	188.6	33.3	190.7			770.9			1,236.3
	2002							393.8			393.8
	Total	**52.8**	**188.6**	**33.3**	**190.7**	**0.0**	**0.0**	**1,164.7**	**0.0**	**0.0**	**1,630.1**
UNICEF	1999					12.7					12.7
	2000					105.6					105.6
	2001					205.9					205.9
	2002					154.4					154.4
	Total	**0.0**	**0.0**	**0.0**	**0.0**	**478.6**	**0.0**	**0.0**	**0.0**	**0.0**	**478.6**
UN/ICTR	2001		163.3								
Grand **Total**	**RWF**	**2,823.0**	**3,103.9**	**278.9**	**1,020.3**	**478.6**	**1,600.0**	**2,364.7**	**987.8**	**3,031.1**	**15,688.3**
Rate 1$=450RWF	**US$**	**6.3**	**6.9**	**0.6**	**2.3**	**1.1**	**3.6**	**5.3**	**2.2**	**6.7**	**34.9**

A quick read of the table permits the following observations for the three-year period from 1999 to 2002:

- The European Union remains the principle donor to the Rwandan judicial system. Member states of this union have also heavily contributed to a variety of bilateral projects. Only France has remained relatively modest in its contributions.
- USAID is one of the big donors.
- What we called "general support for the rule of law" covers budget allocations that support almost all sectors, through support of MINIJUST's and the Supreme Court's operations.
- The most important budget allocations in the last four years were:
  1. Institutional support (USD 6.9 million)
  2. General support for the rule of law (6.7)
  3. Building and rehabilitation (6.3)
  4. Prison system (5.3)
  5. Gacaca program (3.6)
- The main budget allocations (1 & 2 above) cover operations. This can be justified because the judicial system was almost totally destroyed during the genocide and these funds were necessary in order for decision-making entities to function intensively and regularly.

B. *Some comments linked to this data:*

- When considering the priority needs ranked by nearly all categories of interviewees, we notice that allocations do not always sufficiently align with needs. The "human resources" category (essentially training) is one of the most poorly funded items, even though this was a priority of all judicial system stakeholders, including donors, magistrates, lawyers, and HRNGOs (who specifically deplored the lack of magistrate qualifications).
- Operational support receives the lion's share compared to other needs (building and rehabilitation of infrastructures, big logistics like vehicles, etc). It is evident that the rehabilitation of a system after war and genocide requires important support for operations. This, however, should not diminish investment in capital infrastructure and other long-term investments, because donor funding ends one day or the other.
- Allocations for "support to judicial procedures of genocide" and "judicial assistance" are among the poorest, yet all interviewees were outspoken on the need for these programs. Note, for example, that ASF invested considerable efforts here but then had to suspend its "judicial assistance" sub-program. Similarly RCN, whose support helped to achieve the finalization of court proceedings for many genocide suspects, experienced reduced allocations in 2001. These two NGOs used to receive a lot of support from donors.
- This development has had negative effects on system operations in terms of closed cases. Reports from LIPRODHOR[26] indicate, for example, that there were exceptional results in terms of genocide cases in the year 2000 (2458 people were adjudicated, almost half of all cases closed from 1997 to 2000), which were achieved by "generalizing" cases in the pipeline. These efforts resulted from logistical and financial support to the prosecutors' offices, courts and tribunals, and to the Bar Association by NGOs like ASF and RCN, as well as that from the DCHR, which trained a good number of paralegals. This support was reduced in 2001 and the number of suspects adjudicated also decreased significantly: 1,416 in 2001 versus 2,458 in 2000. With the resumption of activities in 2002, RCN has been able to support 105 court cases for 2,458 suspects and closed out 46 cases for 724 suspects from December 2001 to May 2002.[27]

[26] LIPRODHOR, CDIPG Center, *Four years of court proceedings of genocide in Rwanda*, July 2001
[27] RCN, *Program to support justice*, Kigali, July 2002, pages 15-17

Below is a second table on donor allocations from updated data that we culled from sources available to us.[28]

Table 9: Donors' support: Data provided by donors

Donors	*Support*	*GOR (MINIJUST, Commissions, Supreme Court)*	*NGOs*	*HRNGOs*	*Total (M)*	*Currency*	*Rate*	*Total US$*	
							23.09.02		Source
EU	Ad 2001	4.26			4.26	Euro	1.02	4.19	R
	Ongoing	12.10	5.57		17.67		1.02	17.37	R
	Projected				0.00		1.02	0.00	
	Total	**16.36**	**5.57**	**0.00**	**21.93**		**1.02**	**21.56**	
Belgium	Ad 2001	1.11			1.11	Euro	1.02	1.10	R
	Ongoing	317.06	1.70		318.76	FB	41.04	7.77	R
	Projected(2004)				0.00		41.04	0.00	
	Total							**8.86**	
Holland	Ad 2001	2.12	1.64	0.02	3.78	US$	1.00	3.78	R&B
	Ongoing	0.77	0.82	0.62	2.21		1.00	2.21	R
	Projected				0.00		1.00		
	Total	**2.89**	**2.47**	**0.63**	**5.99**		**1.00**	**5.99**	
Canada	Ad 2001	3.70			3.70	C$	1.55	2.38	R
	Ongoing	5.00			5.00		1.55	3.22	R
	Projected				0.00		1.55	0.00	
	Total	**8.70**	**0.00**	**0.00**	**8.70**		**1.55**	**5.60**	
USA	Ad 2001	2.13	6.50	0.12	8.74	US$	1.00	8.74	R
	Ongoing				2.35		1.00	2.35	
	Projected (2003)				0.00		1.00	0.00	
	Total	**2.13**	**6.50**	**0.12**	**11.09**		**1.00**	**11.09**	
Norway	Ad 2001	1.60			1.60	US$	1.00	1.60	R
	Ongoing	2.09			2.09		1.00	2.09	R
	Projected(2003)				0.00		1.00	0.00	
	Total	**3.69**			**3.69**		**1.00**	**3.69**	
Sweden	Ad 2001		1.37		1.37	US$	1.00	1.37	R
	Ongoing				0.00		1.00	0.00	
	Projected				0.00		1.00	0.00	
	Total	**0.00**	**1.37**		**1.37**		**1.00**	**1.37**	
Denmark	Ad 2001	0.38			0.38	US$	1.00	0.38	B
	Ongoing		1.84		1.84		1.00	1.84	B
	Projected				0.00		1.00	0.00	
	Total	**0.38**	**1.84**		**2.22**		**1.00**	**2.22**	
Switzerland	Ad 2001				0.00	CHF	1.49	0.00	A
	Ongoing	0.45	0.24		0.69		1.49	0.46	A
	Projected				0.00		1.49	0.00	
	Total	**0.45**	**0.24**	**0.00**	**0.69**		**1.49**	**0.46**	
Germany	Ad 2001				0.00	Euro	1.02	0.00	
	Ongoing	4.85	0.13		4.98		1.02	4.89	A
	Projected(2004)				0.00		1.02	0.00	
	Total	**4.85**	**0.13**	**0.00**	**4.98**		**1.02**	**4.89**	
	Grand Total							**63.98**	

Legend: R=Representative: B: GOR Budget extracts, A= Cooperation department of the Belgian embassy

This table is much better than the one we got from data we received from the budgets, having the advantage of covering a longer period (1996-2004) by including future projects.[29] The table permits the following observations:

- Belgium comes as second biggest donor after the EU, followed by the United States.

When we interviewed the Secretary General of the MINIJUST, she revealed that donor funding is not always absorbed in the period agreed upon. The main reason given was that the time between the signature for a project and the disbursement of funds is often

[28] The heads of cooperation in the EU, Belgium, the Netherlands, the US, Canada, and Norway have provided us with easily quantifiable data on their interventions. We would like to thank them. For others, we had to rely on secondary data sources, like GOR budgets and NGO documentation).
[29] Given that reforms are in preparation for the judicial sector, donors foresee new programming to support them.

very long. Sometimes, donors attach start-up conditions that are very hard to fulfill, whether by partners or the ministry itself. For example, GTZ recently required that a German lawyer be part of a project that it agreed to fund. But even at the time of this survey, GTZ was never able to find an available German lawyer. Further, at the time of program closeout, some donors demand respect of the initial timetable and will reallocate unused fund balances (due to incompletion by deadlines) to other projects or other countries.

- MINIJUST's observations about donors are summarized in the following table:[30]

Donors allocations perceived by the Ministry and Officials of the judicial system	
General appreciation	Specific observations
1. Allocations contribute positively to the development of justice in Rwanda. 2. Nevertheless, there should be transparency in the use of funds because generally, MINIJUST is not aware of the availability of funds. 3. Some donors prefer to fund sub-sectors of the magistracy.	1. Concerning modalities of project action plans before their execution, MINIJUST should be consulted first, in order to indicate priorities. 2. For each project, budget predictions for the following year should be communicated to MINIJUST in order to help it prepare its own budget. 3. There should be flexibility in terms of fund disbursement.

- These observations by MINIJUST are similar to those of the other judicial system officials (Supreme Court, Prosecutor General, National Commissions). While appreciating the donations, all officials deplored the lack of transparency concerning data from their interventions and the lack of discretion permitted in management of these resources.
- It is interesting to contrast these views with those of the donors. The following table shows the donors' considerations.

Relations with the Ministry, as viewed by donors	
General appreciation	Specific observations
Lack of synergy between the MINIJUST and donors, and weak coordination of interventions. 1. Weak planning, lack of global vision. 2. Lack of transparency in the utilization of funds, and a lack of trust in MINIJUST.	1. Risk of duplicating efforts and forgetting other less important needs. 2. Weak management capacity of available goods and planned actions. 3. Almost no feedback (i.e. what is finished, ongoing, needed in the future.)

- What is striking is the fact that the donors raised the same concerns about the Ministry's lack of transparency, duplication, and waste of resources.

- However, during our continued contact with these groups, we noted a strong desire to develop more explicit planning, and deeper coordination and collaboration. All have the strong desire to improve the Rwandan judicial system.

[30] These observations are extracted from answers that we received from different departments of the MINIJUST.

3.6. The work of the magistrates

Although the system is gradually gaining strength, the Rwandan magistrates corps is confronted with a gigantic and unique task: not only must they investigate and adjudicate the many people accused of genocide, but in addition both old and new non-genocide cases await their attention.

The following table confirms this fact:

Table 10: Number of prisoners in 2000, 2001 and 1st quarter of 2002

	Genocide									Common Law (CL)									Total CL & geno-cide
	Prisons				Communal Cells				Total Géno-cide	Prisons				Communal Cells				Total CL	
	M	W	C	Tot.	M	W	C	Tot.		M	W	C	Tot.	M	W	C	Tot.		
Rwanda: Annual figures of prisoners in 2000 and 2001																			
Year 2000	81787	2389	3453	87629	20630	795	437	21862	**109 491**	3908	402	580	4890	1398	114	35	1547	**6 437**	**115 928**
Year 2001	81119	2493	3347	86959	16469	522	346	17337	**104 296**	5607	542	935	7084	1134	94	33	1261	**8 345**	**112 641**
Kigali: Total figures of prisoners in 2000, 2001 and 1st quarter 2002																			
Year 2000	17548	515	1077	19140				8	**19 148**	941	162	194	1297				164	**1 461**	**20 609**
Year 2001	15983	635	776	17394	1			1	**17 395**	1676	171	345	2192	126	17		143	**2 335**	**19 730**
1st Q 2002	15923	629	776	17328				0	**17 328**	1874	171	371	2416				84	**2 500**	**19 828**
Kibuye: Total figures of prisoners in 2001 and 1st quarter 2002																			
1st Q 2001	5579	188	201	5968	1129	38	22	1189	**7 157**	162	80	18	260	59	5	2	66	**326**	**7 483**
2nd Q 2001	4630	185	237	5052	1054	37	31	1122	**6 174**	208	19	16	243	64	5	3	72	**315**	**6 489**
July 2001	5660	187	242	6089	1053	37	22	1112	**7 201**	90	21	17	128	59	7	4	70	**198**	**7 399**
August 2001	5555	176	243	5974	444	26	0	470	**6 444**	179	22	21	222	14			14	**236**	**6 680**
1st Q 2002	6452	207	321	6980				0	**6 980**	260	36	39	335	37	10	2	49	**384**	**7 364**
Gitarama: Total figures of prisoners in 2001 and 2002																			
Year 2000	7939	200	304	8443	9400	393	399	10192	**18 635**	187	13	32	232	368	35	6	409	**641**	**19 276**
1st Q 2001	7206	196	316	7718	9459	381	341	10181	**17 899**	206	19	33	258	388	24	5	417	**675**	**18 574**
2nd Q 2002	7720	196	308	8224	9292	372	334	9998	**18 222**	200	22	36	258	355	31	6	392	**650**	**18 872**
July 2002	7219	196	308	7723	9281	371	334	9986	**17 709**	220	22	35	277	280	25	6	311	**588**	**18 297**
1st Q 2002	7196	194	293	7683	9042	338	255	9635	**17 318**	361	24	45	430	191	35	5	231	**661**	**17 979**

Source: MINIJUST, Department of Justice Administration, July 2002

This table shows the magnitude of the magistrates' work, due to the large number of prisoners detained as genocide suspects. These are on-going cases. A considerable effort has been invested in speeding up these cases. A quick look at the genocide cases that have already been adjudicated and closed is very encouraging.

We use data gathered by the CDIPG[31] in the following table:

[31] These numbers are considered by the CDIPG as provisional, but are estimated by many authors as viable because LIPRODHOR has its own observers in the courts.

Table 11: Judicial decisions completed per year (Dec 1996 – June 2002)

Year	*No. of people tried*	Judicial decisions									
		Death penalty		*Life sentence*		*Time Sentences*		*Acquittal*		*Other*	
		Total	*%*	*Total*	*%*	*Total*	*%*	*Total*	*%*	*Total*	*%*
1997	379	117	30.9	123	32.5	105	27.7	34	9.0	0	0.0
1998	895	115	12.8	286	32.0	292	32.6	195	21.8	7	0.8
1999	1 306	144	11.0	400	30.6	462	35.4	274	21.0	26	2.0
2000	2 458	164	6.7	616	25.1	1 130	46.0	379	15.4	169	6.9
2001	1 416	120	8.5	370	26.1	577	40.7	312	22.0	37	2.6
Jan-June 2002	757	29	3.8	164	21.7	331	43.7	202	26.7	31	4.1
Total	**7 211**	**689**	**9.6**	**1 959**	**27.2**	**2 897**	**40.2**	**1 396**	**19.4**	**270**	**3.7**

Source: CIPDG/LIPRODHOR, August 2002

Note that magistrates (both prosecutors and judges) reached unimagined performance levels, with a permanent increase in the number of people judged. They were supported, in part, by a government policy focused on training magistrates and resolving genocide cases as quickly as possible (via apprising suspects of organic law No. 08/96 and the use of confessions and guilty pleas), and also by the interventions of NGOs, particularly RCN's support in "fast track" cases and ASF's for judicial assistance. These "fast track" cases have particularly sped up the court proceedings, and RCN has developed a lot of experience in this area. The objectives of these shortened proceedings are to:

- speed up the work of judicial stakeholders and improve quality,
- draw the population closer to the judicial mechanisms, and
- encourage confession during hearings.

Concerning non-genocide cases, looking at the table that shows the number of prisoners, we note that a large number of them are detained in communal cells (*cachots).* In Gitarama, for example, the number of prisoners accused of general crimes that were kept in communal cells in 2000 and 2001 were more numerous than those in prison. The reason given was prison overcrowding.

Further, we note that the number of detainees accused of general (non-genocide) crimes increased steadily from one year to the next: from 6,347 in 2000 to 8,345 in 2001 for the whole of Rwanda, and from 1,461 in 2000 to 2,500 in the first quarter of 2002 in Kigali alone. Criminality seems to be growing. In certain provinces, like Gitarama, it is even growing among women (13 to 24 between 2000 and the first quarter of 2002) and children (32 to 45 during the same period).

As for cases processed at the prosecutor's offices and courts, the following table illustrates the situation in some jurisdictions that we visited during the field survey.

Table 12: Court proceedings in certain jurisdictions of Kibuye Province

CFI Kibuye: Civil court cases (2002)

Month	Pending case	Case introduced	Closed case	% compared to cases introduced
January	1 414	46	14	30.4
February	1 446	42	13	31.0
March	1 475	25	13	52.0
April	1 447	18	9	50.0
May	1 456	26	13	50.0
June	1 469	24	19	79.2
Total		181	81	
%			44.8%	

CFI Kibuye: Penal court cases (2002)

Month	Common Law			Genocide		
	Pending case	Case introduced	Closed case	Pending case	Case introduced	Closed case
January	2 218	0	0	72	0	1
February	2 218	11	1	71	0	0
March	2 228	6	1	71	0	9
April	2 233	9	3	62	0	5
May	2 239	0	1	57	0	2
June	2 238	5	3	55	0	5
Total		31	9		0	22
%			29%			

Source: Court bailiff, CFI of Kibuye, July 2002

Canton Court of Mabanza (2002)

Month	Cases in a month	New cases	Closed cases	Cases at the end of the month	Total cases dismissed
January	7	7	6	8	42.9
February	8	11	5	14	26.3
March	14	5	9	10	47.4
April	10	3	0	13	0.0
May	13	4	0	17	0.0
June	17	14	8	23	25.8
Total		44	28		
%			63.8%		

Source: Court bailiff, Canton Court of Mabanza, July 2002

Following are some observations:

- Pending cases in the CFI of Kibuye, whether criminal or civil, are numerous. It was mentioned to us that many of these cases are pre-genocide.
- The number of pending cases is increasing regularly. From one month to the next, cases accumulate on both the civil (from 1,414 in January to 1,469 in June) and criminal dockets (from 2,218 in January to 2,238 in June).
- In contrast, pending cases against genocide suspects are diminishing, with 22 cases closed in six months.
- The rate of closing civil cases is greater than in criminal cases, and seems to have accelerated by the end of the first half of 2002, particularly during the month of July. During the other months, the number of cases closed was relatively constant: around 13 cases per month. In this six month period, this CFI closed 44.8% of the civil cases on its docket.
- If the number of new cases on the criminal docket is relatively weak (31 cases), the rate of closure for this type of case is even weaker (9 out of 31, or 29.3% in six months). One could hypothesize that this is due to the complexity of criminal cases, particularly those genocide cases that sometimes require group trials that

involve tens and even hundreds of people. During the first semester of 2002, however, the CFI of Kibuye processed more genocide cases than common criminal matters: 22 cases out of 72 closed at the beginning of the semester. This may then explain the slow pace of processing common criminal cases. Further, cases of genocide require going many times to the hill sites where these crimes were committed, often requiring that magistrates await funds to enable them to travel.

- In six months, the Canton Court of Mabanza received 44 new cases and closed 28. Clearly this jurisdiction does not attract a large volume of cases, given its limited jurisdiction. It is worthwhile to observe that proposed reforms will expand the jurisdiction of canton courts.

Table 13: Status of cases at the Prosecutor's Office in Gisenyi in 2001

Month	Concerned	Non-genocide cases				Genocide cases		
		Remaining	Registered	Closed by OMP	%	Remaining	Registered	Closed by OMP
July 2001	Detained	166	39	33	84.6	1 895	0	0
	Released	1 193	60	52	86.7	946	2	0
	Total July 01	*1 359*	*99*	*85*	*85.9*	*2 841*	*2*	*0*
August 2001	Detained	180	14	11	78.6	1 895	14	0
	Released	1 295	24	13	54.2	946	1	0
	Total August 01	*1 475*	*38*	*24*	*63.2*	*2 841*	*15*	*0*
Total July-August 01			**137**	**109**	**79.6**		**17**	**0**

Source: MINIJUST, Department of Justice Administration, August 2002

In general, the prosecutors' offices have made a significant effort to establish case files on all genocide suspects. However, there remains the big task of completing investigation on all cases not referred to the Gacaca Jurisdictions. For example, while the State Prosecutor's Office in Gisenyi completed investigation of 2,841 genocide cases in July and August of 2001, 17 new genocide cases were recorded, to which one could add the 1,475 old non-genocide cases and 137 new ones. Despite this workload, they were able to close 109 non-genocide cases.

Further, magistrates who head jurisdictions or prosecutor's offices have many additional administrative functions. This adds equally hard and time-consuming tasks to their routine work responsibilities. They estimated allocating up to 5 hours per day for purely administrative tasks. The law on judicial organization and jurisdictions provides for these administrative tasks. Nonetheless the administrative restructuring of jurisdictions and prosecutor's offices should be an integral part of the current legal reforms, so as to free heads of jurisdictions and prosecutor's offices from these administrative burdens. This could occur by having better qualified administrative staff and workplace equipment which match the magnitude of things to manage.

3.7. The role of judicial independence in the overall mission of the justice system

Judicial independence is one of the pillars of the rule of law, as well as a test of it. The war and genocide fundamentally destroyed this principle. Thus change is therefore undeniable. HRNGO reports, as well as those of the National Commission of Human Rights, indicate commendable progress in this regard but also denounce some violations.

Table 14: Opinions on judicial independence

		Magistrates	%	Milit.magist.	HRNGO	%	Bar	%	Whole	%
		N=32		N=2	N=10		N=6		N=50	
According to other powers										
1	Independent	10	*31.3*	1	1	*10.0*	1	*16.7*	13	*26.0*
2	Not independent	20	*62.5*	1	6	*60.0*	5	*83.3*	32	*64.0*
3	No answer	2	*6.3*		3	*30.0*		*0.0*	5	*10.0*
According to interveners										
1	Independent	20	*62.5*	1	4	*40.0*	5	*83.3*	30	*60.0*
2	Not independent	8	*25.0*	1	4	*40.0*	1	*16.7*	14	*28.0*
3	No answer	4	*12.5*		2	*20.0*		*0.0*	6	*12.0*
According to the hierarchy										
1	Independent	17	*53.1*	1	4	*40.0*	1	*16.7*	23	*46.0*
2	Not independent	11	*34.4*	1	4	*40.0*	5	*83.3*	21	*42.0*
3	No answer	4	*12.5*		2	*20.0*		*0.0*	6	*12.0*
According people in trials									(N=18)	
1	Independent		*0.0*	0	2	*20.0*	1	*16.7*	3	*16.7*
2	Not independent		*0.0*	2	7	*70.0*	5	*83.3*	12	*66.7*
3	No answer		*0.0*		1	*10.0*		*0.0*	1	*5.6*

Compared to other authorities (executive and legislative), the majority of interviewees generally expressed that the judges are not independent from other powers (64%). Rather the tendency to recognize independence compared to other interveners (NGOs, churches, etc.) and the hierarchy is predominant. However, members of the HRNGOs and those from the Bar Association overwhelmingly considered judges insufficiently independent from those being tried.

The Bar Association's opinion on judicial independence deserves a closer look because these respondents regularly interact with magistrates in the practice of their work. One lawyer gave the following reflection: *"a magistrate who is not trained at a law school would have great difficulty understanding overarching legal principles."* To him, such a judge "*cannot have a deep enough knowledge of general principles of law, yet his profession requires that he interprets facts according to them."*

It thus seems evident that development of judicial independence will occur through the recruitment of law faculty graduates and through continuing legal education to deepen judges core knowledge.

To appreciate the power of judicial independence, one must consider the principle that only magistrates have the mission to judge. That is why only law and conscience should guide them. (See Art. 26 of the Constitution of June 1991) Concretely, according to a study by LIPRODHOR, "*the situation in Rwanda on the principle of judicial independence leaves a lot to be desired, for in the majority of courts and tribunals, independence exists only on paper."*[32] This is due, as highlighted by interviewees during our research, to interference by officials in the Executive branch in certain pending cases, through influence peddling and intimidation.

It is evident that magistrates have a big role to play in the constitutional prerogative of independence as we proposed it in our recommendations. Some significant improvements in this regard have been noted. For example, reports from LIPRODHOR indicate that in the case of Bishop MISAGO Augustine, he was found not guilty after many episodes in court, despite suggestion of interference by the Executive.

At the same time, the establishment of the National Human Rights Commission and its effective functioning since May 24, 1999 help to reinforce the rule of law. In effect, the following objectives were assigned to this Commission by the law creating it (Article 3), according to the modalities of independent action:[33]

[32] CDIPG, *Four years of genocide trials in Rwanda, Report of the Information and Documentation Center on the trials of genocide,* Kigali 2001, page 36

[33] Concerning this, see annual reports of the NHRC of 2000 and 2001.

1. Investigate human rights violations and prosecute them, whether committed by the State or an individual, or by organizations working in Rwanda.
2. Sensitize and train the population about human rights,
3. File court actions in cases of human rights violations by whatever individual or association of individuals.

That is why, in both theory and reality, the NHRC exercises an important function in controlling and monitoring in the field of human rights, and has supported on-going efforts for the solid establishment of judicial independence, which is guaranteed by the fundamental rights and freedom of all citizens.

Furthermore, our interviews with other stakeholders, like high officials of the magistracy, donors, members of NGOs, and those of the Bar Association, surfaced the concern that many magistrates tend to censor themselves and by their own admission, thereby jeopardize their independence. For example, according the Chairman of the Constitutional Commission, magistrates should have the courage to affirm the independence of their work, and not be fearful because they represent the "third" power. For ASF officials, recent experience has shown that self-censorship is rather predominant among judges. LIPRODHOR's reports confirmed this point, concerning cases of genocide where judges allowed various pressures to influence them.

The question to ask should be: "where does this tendency of self-censorship come from, this fear of different types of pressure?"

A hypothesis was proposed by a recent study (2001):[34] magistrates do not feel that the Supreme Court and the Superior Council of the Magistrates support them when they are ruling on cases involving the Executive. Unexplainable silence from these entities was felt in cases where judges who delivered judgments deemed unacceptable by some authorities or influential personalities in the provinces were arrested.

With the reorganization of the Supreme Court, there is yet another opportunity to review the role this entity plays in guaranteeing judicial independence, to more firmly take in hand this question of independence and protection of it. The NHRC is engaged in contributing to the advancement of judicial independence.

According the Commissioner General of Police, there is always a risk that an individual judge might abuse this independence by not treating cases as needed and thus not addressing a threat to the entire society. It remains evident that in such cases, the principle of the supremacy of law would require action against a judge caught in wrongdoing. According to him, judicial independence goes hand in hand with the level of qualification and competence of judges.

Proposals have been requested from high-ranking judicial system officials on strategies to promote judicial independence and decentralization. Their proposals are as follows:

A. Strategies for decentralizating the judicial system:
1. Proceed with decentralization within judicial organs, not the prefectures; and
2. Allocate a specific budget to the jurisdictions and prosecutors' offices, and establish a structure of financial and personnel management in each court and prosecutor's office.

B. Strategies for independence of the judiciary:
1. Magistrates and lawyers must report interferences to the Supreme Court, security organs, and the NHRC;

[34] See M. Schotmans, 2001

2. Avoid generalizing: these interferences usually concern only "sensitive" cases, according to the context;
3. Provide an autonomous and sufficient budget;
4. Enforce legal and constitutional guaranties;
5. Sensitize the other powers and the judges themselves;
6. Avoid having magistrates exposed to corruptive influences;
7. Better train magistrates, to be more confident vis-à-vis his conscience and threats;
8. It is through the quality of work that judicial independence will be attained.

Three proposals were subject to long commentary from the interviewees:

- First they insisted that judges should not fear reporting any attempt at pressuring them, wherever it may come from, and they should denounce interferences;
- Second, they noted that many judges do not have the requisite education and that the low wages make it difficult to make a living, therefore exposing them to harsh conditions of life and potentially opening them up to interferences of all sorts.
- And finally, it was mentioned that the quality of work is the most powerful weapon against interferences.

This was also mentioned above: the Supreme Court should protect better the magistrates but also better control the quality of their work, by sanctioning those who are faulty and sensitizing the holders of other powers about interferences in judges' work.

Concerning decentralization within the judicial system, all high-ranking officials interviewed mentioned the unsatisfactory experience in the first years of decentralization that put magistrates under the supervision of prefects. They proposed an internal decentralization of the judicial system, which may better guarantee a greater independence of the judiciary from the Executive.

3.8. The Bar Association

From independence until the current government was put in place, a bar association had never been organized. The Bar Association of Rwanda was finally created by Law No 3/97 on March 19, 1997. The first oaths occurred in 1997 and this body counted 96 lawyers as members as of August, 2002. The same law created the Judicial Defense Corps, a paralegal group with many members trained through the support of the Danish Center of Human Rights (DCHR).

Lawyers and paralegals have greatly contributed to the progress in resolving many genocide cases and in improving access to representation. This work was supported by NGOs like DCHR for paralegals and ASF for the lawyers.

The Rwandan Bar Association receives numerous requests for assistance from indigent defendants. An Office for Consultation and Defense (OCD) has been created in response. This office commits lawyers to not only defend vulnerable persons free of charge but to also cover all related costs like transportation, lodging, and filing fees. This service is provided throughout the entire country.

A pro bono applicant must submit a certificate of indigence provided by the mayor to the president of the OCD. More than a hundred pro bono cases were handled by Bar Association lawyers, but the demand continue to increase more and more.

The young Bar Association of Rwanda is concerned with the development of its members' capacities, particularly those of young lawyers who would like to contribute to the development of the rule of law in Rwanda. Locally provided continuing legal education and study tours are organized. The need for documentation is one of the main constraints to this local capacities development program. Currently the Bar Association rents a facility to accommodate the Lawyer's House. It is looking for assistance in consolidating its infrastructures.

4. System efficiency as it is perceived by its players and beneficiaries

What is the level of appreciation of the efficiency of the judicial system by its players and beneficiaries? This study directed a great number of questions on this topic to those persons interviewed. The following sections present their opinions on various aspects of the judicial system.[35]

4.1. Perception of efficiency

4.1.1. General perception of efficiency

The interviewees expressed their general opinions, as summarized in the following table:

Table 15: General appreciation of system efficiency

		Plaintiffs	%	Defense parties	%	Witnesses	%	Prisoners	%	HRNGO	%	Bar Assn	%	Whole	%
		N=40		N=27		N=17		N=22		N=10		N=6		N=122	
1	Efficient	8	*20.0*	13	*48.1*	4	*23.5*	2	*9.1*	2	*20.0*	1	*16.7*	30	*24.6*
2		29	*72.5*	14	*51.9*	12	*70.6*	20	*90.9*	8	*80.0*	5	*83.3*	88	*72.1*
3		3	*7.5*			1	*5.9*							4	*3.3*

The predominant perception is one of inefficiency (72.1%). This tendency is stronger with prisoners, members of HRNGOs, and the Bar Association, and a little less for other defense parties. Two hypotheses can be proposed: in the criminal system, the feeling that prosecutors and judges had one-sided approach may have influenced defense parties interviewed; in the civil system, they benefited from the system's inertia (slowness, untimely deliveries, complexity of rules of procedure, etc.)

4.1.2. Main problems obstructing the efficiency of the judicial system

Respondents mentioned the following problems (in a descending order):

- Slowness of court proceedings
- Corruption
- Lack of office equipment
- Lack of professional ethics
- Absence of judicial independence
- Insufficient staff and overwork
- Lack of documentation
- Insufficient salary
- Complexity of cases to process
- Short-term mandate (military magistrates)
- Insecurity of judges
- Non-applicability of certain laws (new law of insurance, out-dated laws)
- Little execution of judgments

They mentioned the following reasons for these problems (in a descending order):

1. Lack of trained officials in law
2. Poverty in the country (insufficient resources)
3. Lack of specialization of magistrates
4. Insufficient salaries
5. Insufficient equipment
6. Insufficient staff
7. Bad conception of decentralization
8. Lack of financial autonomy
9. Lack of judicial control

Clearly some reasons were already mentioned as the problems. These are the kinds of problems that create other problems, thereby creating a vicious circle. The other

[35] Details on the specific composition of the sampling are in Appendix 2.

reasons mentioned by some interviewees are ignorance, negligence, a large territory to cover given the reduced number of staff, heavy bureaucracy, and poor staff recruiting.

Solutions suggested are:

1. Initiate the code of ethics 2. Plan for a sufficient budget 3. Train magistrates in law (and also in management and planning) 4. Revise the compensation plan 5. Reform the system 6. Increase staffing 7. Ensure a financial autonomy of the judicial power	8. Control the magistrate's work (via an internal system) 9. Develop policies to reduce criminality 10. Rehabilitate infrastructures 11. Develop strategies targeted at valuing judges' work 12. Sensitize the donor community to continue supporting the judicial sector 13. Ensure follow-up on the magistrate's work

4.1.3. Expectations of citizens and their opinions on the quality of the judicial system

Concerning their expectations, litigants (plaintiffs, defendants, witnesses, and prisoners) expressed the following points of view in the table below:

Table 16: Expectations of litigants and opinions vis-à-vis the Judiciary

	Categories of litigants	Plaintiffs	%	Defense parties	%	Witnes-ses	%	Prison ers	%	Whole	%
		N=40		N=27		N=17		N=22		N=106	
Satisfactory expectations											
1	Justice (application of law)	20	*50*	13	*48.1*	3	*17.6*	9	*40.9*	45	*42.5*
2	Quickness of proceedings	3	*7.5*	3	*11.1*			3	*13.6*	9	*8.5*
3	Human rights respect			7	*25.9*					7	*6.6*
4	Revealed truth			5	*18.5*			1	*4.5*	6	*5.7*
5	Institution of Gacaca jurisdictions					1	*5.9*	1	*4.5*	2	*1.9*
6	Beginning of the genocide proceedings					2	*11.8*			2	*1.9*
7	Independence of the Judiciary					1	*5.9*	1	*4.5*	2	*1.9*
8	Sensitization of laws							1	*4.5*	1	*0.9*
9	Judicial assistance							2	*9.1*	2	*1.9*
10	Diminution of sentence because of confession							2	*9.1*	2	*1.9*
11	No satisfactory expectation	13	*32.5*	4	*14.8*	7	*41.2*	3	*13.6*	27	*25.5*
12	No answer							3	*13.6*	3	*2.8*
Less or not satisfactory expectations											
1	Justice			7	*25.9*	10	*58.8*	10	*45.5*	27	*25.5*
2	Respect of procedures	4	*10*	6	*22.2*			1	*4.5*	11	*10.4*
3	Impartiality	10	*25*			2	*11.8*	3	*13.6*	15	*14.2*
4	Execution of sentences	5	*12.5*							5	*4.7*
5	Reduction of sentences	1	*2.5*							1	*0.9*
6	Increase of salaries	1	*2.5*	1	*3.7*					2	*1.9*
7	Reinforcement of capacities			1	*3.7*					1	*0.9*
8	Quickness of proceedings	16	*40*			3	*17.6*	8	*36.4*	27	*25.5*
9	Beginning of the Gacaca jurisdictions					2	*11.8*			2	*1.9*
10	Sensitization of the population					1	*5.9*			1	*0.9*
11	Independence of the judicial system							2	*9.1*	2	*1.9*
12	Human rights respect							4	*18.2*	4	*3.8*
13	Reconciliation							1	*4.5*	1	*0.9*
14	None	2	*5*			4	*23.5*			6	*5.7*
15	No answer							3	*13.6*	3	*2.8*
Frequent opinions concerning the qualities of the judicial system											
1	Fair justice	18	*45*	9	*33.3*			10	*45.5*	37	*34.9*
2	Truth revelation	1	*2.5*	4	*14.8*					5	*4.7*
3	Respect of human rights			3	*11.1*	2	*11.8*			5	*4.7*
4	Competence of magistrates			2	*7.41*	4	*23.5*			6	*5.7*
5	Confession procedures			2	*7.41*	2	*11.8*			4	*3.8*
6	None	8	*20*	7	*25.9*	7	*41.2*	7	*31.8*	29	*27.4*
frequent opinions concerning the weaknesses of the judicial system											
1	Slowness	32	*80*	15	*55.6*	10	*58.8*	12	*54.5*	69	*65.1*
2	Corruption	10	*25*	3	*11.1*	3	*17.6*	1	*4.5*	17	*16.0*
3	Lack of execution of sentences	5	*12.5*							5	*4.7*
4	Lack of human rights respect	2	*5*	5	*18.5*			4	*18.2*	11	*10.4*
5	Costly judicial assistance	1	*2.5*			2	*11.8*			3	*2.8*
6	Lack of independence	1	*2.5*			4	*23.5*	3	*13.6*	8	*7.5*
7	Partiality							3	*13.6*	3	*2.8*
8	Incompetence	3	*7.5*			2	*11.8*			5	*4.7*

Looking at these data, the category of "justice rendered with equity" is predominant in the opinion of interviewees as a satisfied expectation, compared to other expectations met (42.5%), and as a quality of the system that is more mentioned (34.9%). They have confidence in the system and estimate that justice is generally administered with respect to the law (50% of plaintiffs, 40% of prisoners, 48% of defendants, and 17% of witnesses).

Nevertheless, the dimension of "fair justice" is also one of the expectations less or not satisfied mentioned by a quarter of respondents (25.5%). A quick read of the table leads

one to notice that not all respondents mentioned this expectation. That is why none of the respondents mentioned it as an unsatisfactory expectation.

However, many litigants complained about slowness. Mentioned first as a less or unsatisfactory expectation (25.5% for quickness of court proceedings as an unsatisfactory expectation), slowness is mentioned as the main weakness of the Rwandan justice system (65.1%).

Looking at human rights, the analysis of the above table shows that many prisoners complain about the lack of respect for human rights (18% as unsatisfactory expectation and weakness of the system). Other categories do not seem to find fault here. It would be helpful to investigate whether this concern is more related to prisoners' conditions of detention.

Witnesses have greater expectations for the establishment and efficiency of the Gacaca Jurisdictions than other parties. These same witnesses believe that truth will be more revealed in the Gacaca Jurisdiction than in the traditional justice system. They are surely going to testify.

Litigants mention the problem of judicial independence less than others: only two out of 106 interviewees referred to this problem either as a satisfactory or unsatisfactory expectation. In fact, according to some officials, it is inconceivable to imagine the Executive interfering in the ordinary affairs of citizens.

All categories of respondents are preoccupied by the problem of judicial corruption. It ranked as the second greatest weakness of the judicial system (16%). It was mentioned especially by plaintiffs (25% against 4.5% of prisoners); they are more likely to suspect judges when they lose their cases (even if there was a procedural ground), and more offended when corruption occurs.

The lack of execution of judgments is a problem only mentioned by plaintiffs (12.5%). This shows the reality that this problem mainly prejudices the plaintiff, who goes to the court seeking justice but due to lack of execution, receives nothing after a long and expensive procedure.

Concerning judicial assistance, prisoners more than the rest of respondents appreciate the quality of judicial assistance that they receive. However, all respondents mentioned the fact that assistance and representation are expensive.

It is interesting to compare responses from citizens to the rest of the categories of respondents on the subject of magistrate competence. For the latter (lawyers, high ranking officials in the system, magistrates themselves), this issue is the most pertinent one of all, but citizens appear not very concerned about it: 6 out of 106, or only 5.7% mentioned this issue and did it in terms of quality of the judicial system. Thus for litigants, the problems that concern them vis-à-vis the judicial system are slowness and corruption.

Among the expectations met were ones of two prisoners who benefited from sentence reduction through plea bargaining; this procedure was considered to be a good quality of the system by two witnesses and two defendants.

The other weaknesses that were mentioned by a smaller number of respondents are the low wages of magistrates, and the lack of reinforcement of human and material means.

4.1.4. Causes for slowness in processing cases

Litigants and members of the Bar Association attribute the slowness to the following factors, according to their importance:

- Insufficient number of judicial staff
- High number of cases
- Corruption
- Complexity of procedural rules
- Weak motivation of magistrates (low wages, negligence, etc.)
- Weak judicial culture for many magistrates
- Lack of logistics
-

Some think that aspects of the judicial reform could bring useful solutions (for example the new status of magistrates, financial autonomy, new organization code and judicial competence, and reform of procedure rules).

It would be hard not to mention some pertinent comments from different categories of respondents:

1. Members of the Bar Association complain that other powers interfere, under the form of orders or injunctions.
2. According to plaintiffs, point to corruption, whether moral or material (privileged friendship "*igihango*"); the length of procedure rules that lead to court recesses for different reasons; litigants fearing to appear in courts; and lack of judges and defense lawyers.
3. Defendants complain that magistrates leave their work under the pretext that wages are insufficient and can therefore take care of their personal problems ("*gushugurika*"), working underground.
4. Prisoners also mention the delays caused by court recesses, the lack of independence in terms of interference by the Executive, obstruction of cases and judgment of proceedings; and judges deserting their work because of insufficient wages.

4.1.5. Opinion of magistrates and members of HRNGOs on the satisfaction of citizen expectation

The question of citizen expectations was also asked to the magistrates. According to them, the lack of satisfaction of litigants might be due to the following reasons, in descending order:

1. Slowness of proceedings 2. Insufficient staff 3. Lack of independence of the magistrates 4. Lack of a fair justice 5. Biased investigations and partial judgments 6. No execution of judgments 7. Lack of punctuality and frequent court recessions	8. Lack of code of conduct 9. Ignorance of litigants in terms of legislation 10. Corruption of magistrates 11. Lack of administrative control of magistrates 12. Bad reception

- Military magistrates estimate that the satisfaction of litigants is due to the independence of judges, the way they are welcomed by magistrates, the devotion of magistrates, and a good administrative organization. Those are useful recommendations to the magistrates.
- A representative of Haguruka HRNGO estimates that justice is rendered with slowness, but it is nonetheless well rendered. He complained of the lack of execution of judgments. According to his experience, many judgments, including those that are fair and well rendered, have minimal chances of being enforced. Closing a case is very expensive, one must make sure that the court clerks are present -- that is to say that their transportation must be covered, which is sometimes beyond the means of a great number of litigants. The reduced number of court bailiffs for the CFI of Kigali is a crucial problem.
- A representative of CLADHO mentioned a number of unsatisfactory expectations of the system from litigants. He stresses that the lack of publication of results of investigations and judgments, especially for sensitive cases, encourage impunity and may lead to a cover-up of law violations. He found insufficient the measures taken against corruption.

4.1.6. Proposed improvement of the judicial system

The issue of improving the judicial system was also asked of different groups of citizens. This investigation resulted in the following propositions commonly shared by many of them: *civil and judicial training for the population, control of the magistrates, increase in staff, law observation, and fighting against corruption.*

It is pleasant to note that the proposal concerning the culture of civil and judicial awareness comes from prisoners. This indicates a commendable job of re-education of prisoners that augurs well for reduced recidivism.

Concerning results from civil society and HRNGOs, the representative of CLADHO insisted on the following points: *follow-up of investigations on political assassination, break the bad practice of court recesses.* The representative from HAGURUKA would like to see a rapid implementation of the law creating a body of court bailiffs to speed up the sentencing of certain judgments[36]. Their training is also important.

4.2. Evaluation of the judicial system by donors and NGOs

The survey also looked at most donors who are active and whose representatives were present at the time of this assessment.[37]

4.2.1. Points of view of donors

As main problems that limit the efficiency of the judicial system, donors mentioned the following:

1. Interference of the Executive with the Judiciary: political use of the judicial system
2. Lack of compensation for victims
3. Lack of follow-up and sentencing of court proceedings
4. Lack of coherence between international treaties and procedures in place in Rwanda

[36] The law No. 31/2001 of June 12, 2001 authorizes the creation and organization of a body of court bailiffs who are professionals and independence in the justice system. Harmonization of this law with other laws is under study.
[37] See the list of donors we contacted in Annex II relative to the sampling we had.

Donors support the judicial system and think that the needs of the classic system are the following, in descending order:

1. Training of judicial staff: (62.5%)
2. Means and management autonomy: (37.5%)
3. Independence of the judicial system: (37.5%)
4. Rehabilitation of the judicial system after the tragedy of 1994: (25%)
5. Better consideration of magistrates: (25%)
6. Judicial documentation: (25%)
7. Coordination of institutional competencies (12.5%)
8. Law reforms (12.5%)

Even if donors estimate that these are GOR's needs in the judicial sector, many of them don't know explicitly the priorities by sector. Note that the important investments allocated to the Gacaca process correspond to the current government priority. Faced with a big interest in the Gacaca process, there is a risk to forget the traditional system, even when we know that this system was heavily destroyed in 1994 and must handle both the common crimes and those relating to the genocide.

In fact, donors recognize that their interventions should be directed to the GOR's priorities. But they feel that there is no transparency in planning the needs of MINIJUST, or there is not sufficient coordination at the Ministry's level (25%) nor at their own (12.5%). The result is that each donor or NGO is tempted to deal directly with the Minister. However the Secretary General of the MINIJUST revealed to us that on one side there is a coordination unit in the ministry and that on the other, a strategic plan for the MINIJUST is being done with the support of UNDP.

Donors indicated concrete actions that have been taken up till now to support the judicial system:

1. Building and rehabilitating infrastructures
2. Institutional support to the Ministry
3. Support to the management of prosecutor's offices and judicial police
4. Rehabilitation of the National Center for Judicial Training
5. Support in court proceedings, presentation of prisoners to the population, sensitization of prisoners to confession
6. Support to population sensitization (rights, different specific laws, Gacaca process: participation, elections, training of judges, files, etc..)
7. Support to local human rights NGOs and other NGOs
8. Judicial assistance to suspects and victims of genocide
9. Training of Gacaca judges

To make their interventions more efficient, donors mentioned the following:

1. Setting up a monthly forum of donors with the Ministry (37.5%)
2. Reinforcing co-management and mutual confidence with the Ministry (25%)
3. A good coordination of the Ministry of the donors' actions by creating a coordination structure within it (25%)
4. Reinforcing consultation mechanisms between donors (12.5%)
5. Transparency in the management of budgets and grants (12.5%)
6. Exchange of experiences, problems, programs of different donors (12.5%)
7. The definition of quantitative and qualitative criteria of their actions (12.5%)
8. The reinforcement of administrative capacities of the MINIJUST (12.5%)
9. Sensitization to a culture of law (12.5%)

4.2.2. Some observations of magistrates on the donors' allocations

Listening to magistrates, most of them don't even know the origin of the financial or logistical support that is put to their disposition. Clearly, information does not flow sufficiently. In addition, magistrates gave suggestions relative to the kind of interventions they would appreciate, according to the following priority scale:

1. Training of judges	59.4%
2. Office supplies	56.3%
3. Transportation	40.6%
4. Building of halls and offices	28.1%
5. Maintenance	12.5%
6. Lodging for magistrates	6.3%
7. Documentation	6.3%
8. Travel expenses	6.3%
9. Budget increments	3.1%

4.3. Opinions on the level of the population's knowledge on their rights

The issue concerning the level of the citizen's knowledge in terms of their rights and procedural rules was asked to members of the Bar Association, civil society, and HRNGOs, as well as to different groups of litigants in their respective position as plaintiffs, defendants, witness or prisoners.

4.3.1. Appreciation at the level of knowledge of rights

Interviewees of all sorts of categories think that citizens don't know their rights well enough (68.8%). The opinions on the degree of knowledge on procedure rules are even more negative (71.58%). A great part of the population sensitization on rights is felt by respondents as a program to support. The media is asked to play a big role in this perspective.

4.3.2. Appreciation on the role of local authorities and the extended family in conflict resolution

The issue on the role of public leaders of grass root organizations in conflict resolution was asked to all categories of respondents, except judges of the Gacaca Jurisdictions. Opinions are rather scattered between a positive perception of their role (50.6%) and a negative perception (49.4%). The magistracy, members of the Bar Association, civil society, and HRNGOs, as well as defendants, are among those who gave it a sensitive role (average of 60%).

According to a representative of CLADHO, "this role is better ensured" since the setup of a mode of collegial governance with the beginning of Community Development Committees (CDC) and Political and Administrative Committees (PAC), whose members are elected. This decreased abuse of power. The representative of HAGURUKA is happy about the work done by these grass root organizations in conflict resolution, especially for family rights. They diligently follow the violations committed against women and children. However, sharing the views of his colleagues, the representative of LIPRODHOR estimates that these groups are more open to manipulation, corruption, impartialities, and to making mistakes in passing judgments.

Nevertheless plaintiffs, witnesses, and prisoners have rather a negative appreciation, on an average 63.3%. The relative gap in the opinions is explained by the fact that law practioners appreciate seeing judicial backlogs decrease, yet plaintiffs, witness and prisoners think that resort to the courts is portrayed as a last chance after failure of mediation, with all of the implications in terms of delays and bribes.

The issue relative to the role of the extended family in the mediation of conflicts was also asked to many respondents.

Respondents positively appreciated the role of the extended family in conflict resolution, by 53.95%, although it is also negatively appreciated by 46.05%. The responses above 50% (from 50 to 70%) come from plaintiffs, defendants, and prisoners. Only the witnesses had a skeptical response on the role of the family in conflict resolution through mediation. There are many reasons behind this mistrust, from geographic dispersion of families, war and genocide consequences in terms of strengthening the culture of suspicion, rampant poverty, without of course forgetting fragile institutional support (civil society and public power). It would seem that the other groups of citizens continue to rely on the family, but that in reality, it is under threat.

4.4. Perception of vulnerable groups by respondents

The interest for access to justice problem led the study to enlarge on the perception of vulnerable groups' access to fair justice. HRNGOs as well as the different groups of people to be tried did the conceptual specification. In order to ensure greater clarity, a translation session was submitted to the team to the interviewers and supervisors. After discussions and exchanges, the terminology that retained to translate better the minority concept or vulnerable group was *abatagir'ijambo* in Kinyarwanda or those who denied a platform in an assembly, even for matters that concern them, the second being a numerical minority. Here the categories of vulnerable groups identified by the respondents according to their understanding or social considerations.

4.4.1. Proposal of vulnerable group typology by the respondents

Data collected from 7 vulnerable groups are as follows:

1. Poor people: (35.64%)
2. Women: (24.78%)
3. Children: (14.44%)
4. Genocide survivors: (8.44%)
5. Genocide orphans: (8.36%)
6. Street children: (6.2%)
7. Physically or mentally disturbed persons: (5.4%)

It seems that the conductor lead in the typologies that we retained for respondents was either exclusion or fragile state of people who are subjects of a particular vulnerable group in sociological terms as opposed to sufferings encountered, human rights restriction, physical or mental handicap. It is also important to note that the numerical and sociological vulnerable group of the "Twa" ethnic group was not mentioned anywhere. Could this be due to any auto-censorship, rejection, guilty conscience towards this social group, or ideological influences?

4.4.2. Specific problems of vulnerable groups concerning the judicial system

Respondents of different groups converged towards four major problems of vulnerable groups:

1. Human rights violation (30.12%)
2. Poverty (27.84)
3. Social marginalization (16.4%)
4. Loneliness (9.2%)

According to CLADHO, democracy as a concept of electoral expression of the majority will excludes vulnerable groups from social life. He acknowledges that divisive ideology is still strong in their mentalities.

As for access to justice, the representative from LIPRODHOR mentioned the lack of legal assistance in court proceedings because lawyers' fees are high, as wellas fees associated with judgment. The representative from HAGURUKA mentioned the cases of young mothers, whose children don't have a father, even when judgment passed that they should have one.

4.4.3. Causes of problems that the vulnerable groups experienced

Through different responses, we can assess the sensibilities of each group of interviewees but we can also see some good convergence in their points of view.

There is convergence on seven causes namely:

1. Lack of education (14.28%)
2. Role of the custom (11.64%)
3. Influence on corruption practices (4.92%)
4. Genocide (8.16%)
5. Some deficiency in public powers (8%)
6. Lack of land tenure (3.96%)
7. Poverty (3.96%)

The lack of education does not only correspond to the lack of knowledge of rights and understanding of procedures, but further corruption denounced by respondents and poverty (as consequence of genocide, deficiencies of public powers with lack of land as corollary) are perceived as the big impediments to access to justice.

As for the role of the custom, it possesses certain approaches that constitute a major handicap to the exercise and fulfillment of rights by women (inheritance, children outside marriage, and employment).

As for the deficiencies of public powers, it is often said that the State does not defend quite often the interest of the poor or marginalized persons against the pressures of the dominant layers of society, which could appear in different ways: *appropriate legislation, compensation mechanisms directed towards vulnerable groups, (positive discrimination), social policies in favor of poor and marginalized persons, support to the efforts of the civil society such as the Human Rights Defense Organizations).*

However performances have to be credited towards the GOR in this regard: setting up of the National Commission of Human Rights in all provinces except Kigali City and Kigali Rural for reasons of their proximity to the headquarters, promulgation of laws or development of policies targeting to promote the rights of vulnerable, the withdrawal of Rwanda from the list of countries that do not respect human rights, and the publication of a project for the Rwandan chart for human rights.[38]

As for CLADHO, it is the divisive ideology that is predominant for causing problems to the vulnerable groups, out of which one should add social tensions.

4.4.4. Proposal for solutions to promote access to justice for vulnerable

Through the responses we received, one can sense the main preoccupations of categories of respondents in this descending order:

1. The indispensable intervention of the State (46.18%)
2. Setting up a fair justice system (18.52%)
3. Sensitization of the population (12.7%)
4. Civil culture (6.96%)
5. Free legal assistance (5.22%)
6. Unity and reconciliation orientation (4.94%)
7. Obvious donor support (3.96%)

Civil society and HRNGOs expressed their preoccupations in the following manner:

1. The representative of CLADHO insisted on the concept of setting up an integrated democracy. It is clearly seen that democracy where all groups in the society are included and not only those of the elected majority, avoids exclusion and frustration.

[38] NHRC, Annual report, 2000

2. The representative of LIPRODHOR proposed also the development of a specific program for vulnerable groups.
3. The one from HAGURUKA estimated that organizations at all levels protect vulnerable groups, that being in an organization where women can voice their concerns on human rights violation when one of them becomes a victim of these violations. He proposes that a fund to support single mothers should be put in place to advocate for actions of recognition of fatherhood.

The respondents points of view on the role of the State is rather founded, given that the State is the principal guardian of fundamental social balances, respect of public freedom, citizens' equality to law, legality of decisions, vulnerable group protection (ethnic, social, economic, religious, etc). This explains the average rate slightly higher of 46% given to the importance of the role of the State in addressing the problem of vulnerable groups. When comparing the gap on the sensitization of the population, the middle rate response is 21%.

Sensitization of the population is required if one would like to ingrain the notion of public freedoms and obligations. This leads us to the necessity of the civic culture and the promotion of citizenship identity.[39]

Concerning free legal assistance, there is a need to create a fund, as many respondents mentioned it. There is a law currently being proposed at the GOR level.

As for the institution of fair justice, respondents insisted on the role of the State to eradicate the culture of impunity by appropriated corrective measures towards corrupted magistrates and corrupting persons who are in trials.

The idea of orientation towards unity and reconciliation comes essentially from prisoners. Further, this characterizes the global and strategic vision of the Rwandan government after war and genocide, through collective education (NURC), and the Gacaca jurisdictions. Traditional justice should be positively transformed, in a way to privilege alternative methods of conflict resolution (arbitration, "never-ending discussions, mediation) already in application for commercial matters.

Finally, the support expected from donors is in regard to the limited means of the government and the population, taking into account the priorities of the system. It is therefore urgent that the strategic plan of the MINIJUST becomes a priority and should be strengthened.

[39] A recent colloquium on the theme of citizenship identity was jointly organized by the NUR, NURC and EEC

5. Appreciation of the Gacaca process dynamics

In 2001, the Department of Gacaca Jurisdictions was created within the Supreme Court, pursuant to adoption of the law creating and organizing it. In 2002, the law was implemented with pilot projects in one sector per province.

The Department of Gacaca Jurisdictions is in the process of creating a strategic plan that includes all involved partners, including: the National Police, which ensures the safety of witnesses and prisoners; prison administrators, who appropriately categorize and direct prisoners; HRNGOs, which monitor the process; the Health Ministry with respect to genocide-related trauma; and NGOs, who intervene in other ways.

5.1. Knowledge of Gacaca Jurisdictions and their mission

The question about knowledge of Gacaca Jurisdictions was asked to judges and prosecutors, members of the Bar Association, and HRNGOs, as well as different groups of citizens. There are four points of convergence:

1. Condemnation of the guilty and acquittal of the innocent (38.65%)
2. National unity and reconciliation (32.78%)
3. Discovery of the truth (17.16%)
4. Quickness of proceedings (15.1%)

Note that all of these different aspects were elaborated in the preamble of the law instituting the Gacaca Jurisdictions. The spirit of the Gacaca law is therefore well assimilated. The Gacaca sensitization campaign, which was organized by MINIJUST with USAID support, was effective. It is important to note that donors allocated a substantial budget to this end. Any sensitization requires sufficient means and results are proportionate to the means used.

Other themes appear here and there, such as the participation of the population, the ineffective startup of these jurisdictions, and the urgency to grant reparations to victims. In addition, some respondents expressed slight skepticism about the Gacaca process, most notably genocide survivors.

5.2. Appreciation of the Gacaca Jurisdictions

The question concerning appreciation of Gacaca judges and jurisdictions was posed to magistrates (civil and military) and their responses were as follows:

Table 17: Appreciation of the Gacaca Jurisdictions

	Opinion	**Magistrates**	%
		N=34	
1	Good appreciation	27	79.4
2	Fairly good appreciation	5	14.7
3	Bad appreciation	1	2.9
4	No answer	1	2.9

It is evident that the idea of Gacaca Jurisdictions and the decision to institute them are greatly appreciated by the magistrates (32 magistrates out of 34, or 84.1%, with good and fairly good opinions). These respondents faced numerous problems linked to court proceedings, with all the constraints inherent in the traditional justice system. They have found the Gacaca Jurisdictions to be a way of sharing this heavy responsibility.

Here are some expectations for the effectiveness of Gacaca Jurisdictions, as expressed by different categories of respondents:

1. Condemnation of the guilty and acquittal of the innocent (48.68%),
2. National unity and reconciliation (27.72%),
3. Discovery of the truth (23.83%), and
4. Quickness of proceedings (6.98%).

The main fears are as follows:

1. Not discovering the truth,
2. Partiality of judges,
3. Resurgence of trauma,
4. Settling of scores,
5. Corruption,
6. Lack of responsibility, and
7. Manipulation of judges.

The lack of truth revelation could be inspired by fear of witnesses' testimony or lack of discernment by judges. As for partiality of judges, none think that judgment will be made for genocide culprits and not for culprits of massacres. In evaluating the quality of judges, respondents think that judges lack legal training. They also fear that some judges may have participated in the genocide, while others may not be as "upright" as required. At the Department of Gacaca Jurisdictions, it was mentioned to us that if such cases should occur, they would be deferred to the courts and considered like all other criminal cases. Concerning trauma, one respondent believes that "*the description of facts will make witnesses relive some horrible scenes that survivors lived with, which will lead to a resurgence of trauma." C*oncerning the manipulation of judges, this could result from pressures coming from all directions: administrative authorities, rich people, security services, families, etc.

5.3. Opinions of respondents on the Gacaca judges

Overall, judges and prosecutors have a positive opinion of the Gacaca judges (94.1%, good and fair appreciation), while litigants are more evenly divided on the question (only 42.5% share this positive point of view, while 35.8% have a negative appreciation).

Table 18: Appreciation of the Gacaca judges

	Opinions	Magistrates		Litigants									
			%	Plaintiffs	%	Paralegals	%	Witnesses	%	Prisoners	%	Whole	%
		N=34		N=40		N=27		N=17		N=22		N=106	
1	Good appreciation	12	35.3	17	42.5	9	33.3	8	47.1	9	40.9	43	40.6
2	Fairly good appreciation	20	58.8	0	0.0	0	0.0	0	0.0	2	9.1	2	1.9
3	Bad appreciation	0	0.0	15	37.5	7	25.9	9	52.9	7	31.8	38	35.8
4	None	2	5.9	6	15.0	9	33.3	0	0.0	4	18.2	19	17.9
5	No answer	0	6.0	2	5.0	2	7.4	0	0.0	0	0.0	4	3.8

In reality, even if opinion is generally positive, doubt still exists about the competence of the Gacaca judges to achieve their mission. Everyone stated that any attempt at

discerning an overall appreciation is premature. From an illiterate to a university professor, taking all sorts of people into account, it is therefore prudent not to evaluate in a generalized manner.

5.4. Perceptions of *Inyangamugayo* judges on their jurisdiction

The question on the perception of Gacaca Jurisdictions was put to the Gacaca judges (*Inyangamugayo)* themselves. Their opinions are summarized below:

1. Will to accomplish their mission: 50.0%
2. Unity and reconciliation vision: 33.4%
3. Truth that is hard to reveal: 33.3%
4. Mission which is hard to accomplish: 33.3%
5. Effective startup: 16.7%
6. Difference of opinions on the Gacaca Jurisdictions: 8.3%
7. Hearings not yet begun: 8.3%

Note that according to respondents, judges are committed to accomplishing their mission (50%) but believe that the task is complex and difficult in terms of truth revelation (33.3%) and accomplishment of the mission (33.3%). However, there is an indication of some relief because 16.7% indicated that the startup was effective, and 8.3% would like the hearings to begin. Finally, respondents perceived the fundamental vision for national unity and reconciliation (33.4%) at the heart of Gacaca, as indicated in the motivation for the law instituting the Gacaca Jurisdictions that is constantly reinforced in official speeches.

The Gacaca Jurisdictions judges have the following expectations:

1. To show the guilty and the innocent: 83.3%
2. National unity and reconciliation: 41.6%
3. Revealing the truth: 33.3%
4. Reduction in the number of prisoners: 25.0%
5. Living in security: 16.5%
6. Receiving reparations: 8.3%
7. Economic growth: 8.3%
8. Quickness of proceedings: 8.3%

Almost all *inyangamugayo* judges mentioned as their first expectation, the distinguishing of the guilty from the innocent (83.3%), through the revelation of truth (33.3%) as quickly as in the traditional justice system (8.3%). Positive developments are expected in terms of national unity and reconciliation (41.6%), providing security at the individual and collective levels (16.5%), quick receipt of reparations (8.3%), and economic growth (8.3%). The last point can be attributed to a greater mobilization of human resources, via reduction in the number of prisoners (25%), through the use of TIG (see study done by PRI).[40]

The Gacaca judges indicated the following concerns:

1. Impossible mission: 16.7%
2. Fear of revenge: 16.7%
3. Open conflict: 16.7%
4. Becoming a victim of the truth: 16.7%
5. Public appearance: 8.3%
6. Failure to recognize dead victims who came from elsewhere: 8.3%

[40] It is true that the injection of ex-prisoners into the labor market may cause problems because of its tightness, but it is important for decision makers to start to think about this issue now.

7. Trauma: 8.3%
8. Failure to speak the truth: 8.3%
9. Complicity of judges and genocide suspects: 8.3%
10. Lack of control (incitation): 8.3%
11. Political pressures could jeopardize the mission: 8.3%
12. Security of judges: 8.3%

The first four types of concerns represent the same weight in terms of percentage, and when taken together give the idea of an impossible mission. The other concerns expressed at a rate of 8.3% also reinforce this idea of an impossible mission. One the interviewees precisely summed up one source of concern by saying *"the insecurity of judges could be mainly due to the concern that dissatisfaction of the accused could lead to the imprisonment of judges."*

It was proposed that compensation should match the risks incurred and the work to be done, including *the provision of a per diem, guaranteed medical care for judges, and free school fees for their children.*

Note that there were certain convergences of expectations and fears from other categories of respondents:

1. Unable to speak the truth (41.14%)
2. Danger of trauma (4.71%)
3. Manipulation of judges (4.11%)
4. Lack of remuneration (2.72%)

For some HRNGOs, people could refuse to participate if they are not allowed to talk about the victims who died after December, 1994. The CLADHO representative feared that there would be negative solidarities of all kinds. The LIPRODHOR representative was skeptical about the application of decisions made by the Gacaca judges.

Judges of the Gacaca Jurisdictions appreciate the assistance already provided to them to fulfill their mission. Here are some of their opinions:

1. Stakeholders' disposition to speak the truth 25.0%
2. Massive participation 25.0%
3. Patriotism 25.0%
4. Collegiality 16.7%
5. Training received by judges 16.7%
6. Lessons learned from pilot projects 16.7%
7. Physical presence of authorities 8.3%
8. Logistics 8.3%
9. To feel that Gacaca is a reality 8.3%

Respondents are aware of the opportunities for making the Gacaca Jurisdictions successful, namely stakeholders being disposed to speak truthfully (25%) and massive participation of the population (25%), training that judges received that increased their knowledge capital, perceptions and attitudes (16.7%), the collegial character of work expected from judges (16.7%) in terms of quality of judgments and security of the judges, patriotic fervor of citizens (25%) and the perception of Gacaca as a reality that is here to stay (8.3%), encouragement by authorities by being physically present during the Gacaca proceedings, and the provision of a minimum of logistics to the Gacaca Jurisdictions.

Concerning constraints and difficulties linked to Gacaca, these judges expressed themselves in the following way:

1. Truth dissimulation	16.7%
2. Lack of remuneration	16.7%
3. Lack of equipment	16.7%
4. Irresponsibility of some judges	8.3%
5. Failure to respect the program by the population	8.3%
6. Many cases to process	8.3%
7. Being far from the pilot projects	8.3%
8. Insufficient training	8.3%
9. Existence of genocide suspects among judges	8.3%
10. Lack of collaboration among sitting judges	8.3%
11. Forgetting some facts because of time passed	8.3%

The first three constraints are from a realistic perception that should not be disregarded when forging solutions. As for other difficulties, their solutions should be found on a case by case basis as they occur.

Gacaca judges spoke of the sources of pressures in the following manner:

a) Now

1. The accused	16.7%
2. Administrative authorities	8.3%
3. Survivors	8.3%
4. Hierarchical superiors	8.3%

b) During the proceedings

5. Citizens	16.7%
6. Families of genocide suspects	16.7%
7. Military, local defense, police	8.3%
8. National and international NGOs	8.3%
9. Law makers: judges, prosecutors, lawyers	8.3%

Among the pressures felt, litigants and families of genocide suspects came first. Military, local defense, police, national and international NGOs, and lawmakers followed. Concerning families of genocide suspects, there is a threat of sanctions. As for the litigants, one can project a scenario where a person who is highly regarded by the citizens is either in the proceeding or one of his relatives is, or for some there is settling of scores.

c) After the proceedings

The only pressure comes from those neighbors of judges who might have lost cases (50%). This gives the impression that there are few precise concerns at this point in time, because nothing has started yet. It is like a journey to the unknown.

Here are opinions of the Gacaca judges on how their environment perceives their work:

a) Type of perceptions

- Approval 83.3%
- Disapproval 16.7%

The approval tendency is very dominant.

b) Encouraging facts foreseen in the work of the Gacaca judges

1. Confidence in the capacities of judges	41.7%
2. Population's will to speak the truth	25.0%
3. Population being present	16.7%
4. Acknowledging service rendered	8.3%
5. Cooperation from all	8.3%
6. Participation of survivors	8.3%

The Gacaca judges estimate that confidence in them by the population will help in the success of the Gacaca Jurisdictions (*baratwemera)* (41.7%), as shown through the population's participation in the preparation meetings for the startup of the Gacaca Jurisdictions (16.7%) and from this comes the hope that the truth will be revealed during the proceedings (25%). For now, according to respondents, there is acknowledgment of the services that they are providing (8.3%), this will provide the confidence that is needed from all (8.3%), especially if there is participation of the survivors (8.3%).

c) Discouraging facts foreseen in the work of the Gacaca judges

1. Hiding the truth	25.0%
2. Lack of remuneration	16.7%
3. Insecurity for judges	8.3%
4. Lack of facilitation by the population	8.3%
5. Hopelessness of certain families of genocide suspects	8.3%

The dissimulation of the truth (25%) appears in many Gacaca judges' statements as a major hurdle. As for the lack of remuneration (16.7%), this could be a de-motivating constraint. This should be taken into account now, especially given the risks taken by Gacaca judges, among which is their security (8.3%), as well as hopelessness of certain families of genocide suspects (8.3%).

Looking at other stakeholders in the Gacaca Jurisdictions, here are some expectations for good functioning expressed by the *inyangmugayo* judges:

a) Towards the government

1. Remuneration	75.0%
2. Ensure security of witnesses	50.0%
3. Logistics	8.3%
4. Sensitization of the population	8.3%
5. Insignias to distinguish them from the population	8.3%
6. Training	8.3%

b) Towards donors

1. Remuneration	91.7%
2. Logistics (equipment)	33.3%
3. Transportation	8.3%
4. Medical care	8.3%
5. Training	8.3%
6. Grants to associations of Gacaca judges	8.3%

In all cases, there are strong expectations that donors (91.7%) will pay them fees, which are regarded as too high for the Rwandan government to pay. The response category "grants to the association of Gacaca judges" seems to cover an unvoiced comment that

judges are going to organize themselves in an association and take advantage of material opportunities from donors.

c) Towards the social environment

1. Manifestation of truth	83.3%
2. Presence of the population	16.7%
3. Unity vision	8.3%

The Gacaca judges are strongly aware of how "truth" must mobilize everybody so that the Gacaca Jurisdictions' mission may be fulfilled. Therefore, there is a need for solidarity and unity from all citizens, which must be shown by their presence (16.7%).

As for suggestions concerning the success of the Gacaca Jurisdictions, Gacaca judges strongly insisted on remuneration (41.5%), quickly followed by concerns about security (25.0%), training of judges (16.7%), sensitization of the population (16.7%), and presence of training judges during the proceedings. Other themes appear with a score of 8.3% each, namely ensuring peace, asking and receiving forgiveness, guaranteeing the independence of the Gacaca judges, envisioning justice, and integrating acquitted people. The core of these concerns comes directly from prescriptions of the law instituting the Gacaca Jurisdictions. This shows a good assimilation of the content of this law by the Gacaca judges.

The suggestion concerning the presence of lawyers who have the requisite training in the proceedings could be handled correctly and concretely by consultants and/or observers who are jurists, by having them ready to provide their services on a regular basis to guarantee support by the traditional legal system.

As for the opinions from other categories of respondents, consensus became apparent on the following actions in descending order: training of judges, sensitization of the population, remuneration, respect for the law, vigilance in maintaining the independence of Gacaca judges, material and financial assistance, quickness of proceedings, and instituting rewards for speaking the truth. For HAGURUKA, there is a need to sensitize the population to the true vision of Gacaca, i.e. the word Gacaca's connotation of reconciliation.

Comparing these results with the suggestions from the Gacaca judges, there is agreement on five points:

1. Remuneration	19.06%
2. Sensitization of the population	28.63%
3. Training of judges	21.71%
4. Independence of judges	2.56%
5. Security of judges and witnesses	9.85%

Concerning the influence that donor support may have on the Gacaca judges' work, one respondent noted BTC's support for an office equipment grant. On the issue of adequacy of donors' interventions meeting needs, no answer was given.

As for the interventions required from donors for the success of the Gacaca Jurisdictions, here are some answers given by the *inyangamugayo* judges.

1. Remuneration	75.0%
2. Logistics (office equipment and supplies)	50.0%
3. Training of judges	33.3%
4. Infrastructure	16.7%
5. Reparations to civil parties	8.3%
6. Security of judges	8.3%

Remuneration is a concern for judges, as it appears in all of the previous sections. Next to this key concern, others in descending order of importance are logistics, training of judges, infrastructures, reparations, and security.

5.5. Appreciation of Community Service

Community Service, commonly known in French as *Travaux d'Intérêt Général (TIG),* is appreciated positively with an average rate of 73.16% of respondents in favor of it and 26.84% against.

Those who positively appreciate TIG believe that it helps with the social reintegration of criminals, development of socio-economic infrastructures, national reconciliation, relief of prison congestion, provision of useful labor to the country -- all avoiding any form of historical exploitation (*uburetwa, agahato* - serfdom and forced labor).

Note that the positive appreciation rate by prisoners is 85% and around 100% for witnesses. We can ask ourselves the question of why would defendants negatively appreciate TIG? Their reluctance poses a problem in as much as these community works are designed to reduce sentences.

Respondents formulated the following criteria for success of TIG:

a) According to sitting and standing magistrates

1. Organization	50.0%
2. Sensitization of the population	15.6%
3. State control	12.5%
4. Sufficient security	6.3%

b) According to military magistrates

1. State control	100.0%
2. Training of supervisors	50.0%

c) According Gacaca judges

1. State control	58.3%
2. Direct this TIG to rehabilitate houses that were destroyed during genocide with the help of the government	33.3%
3. Assistance of genocide widows and orphans	8.3%
4. Integrate the Gacaca judges in monitoring	8.3%
5. Work on the fields of genocide victims in order to get some subsistence out it	8.3%
6. Direct the proceeds from TIG reparations towards for genocide victims	8.3%

6. Opinions of ICTR

This study was also interested in respondents' opinions about the International Criminal Tribunal for Rwanda (ICTR). General appreciations are presented in the following table:

Table 19: Opinions on the ICTR

	Opinion	Magistrates		Bar association		HRNGO		Litigants								Whole	%
			%		%		%	Plaintiffs	%	Defense parties	%	Witness	%	Prisoners	%		
		N=34		N=6		N=10		N=40		N=27		N=17		N=22		N=156	
1	Good appreciation	5	14.7	1	16.7	3	30.0	15	37.5	9	33.3	3	17.6	14	63.6	50	32.1
2	Bad appreciation	23	67.6	4	66.7	7	70.0	21	52.5	12	44.4	12	70.6	9	40.9	88	56.4
3	No idea	2	5.9	1	16.7	0	0.0	4	10.0	5	18.5	2	11.8	3	13.6	17	10.9
4	No answer	0	0.0	0	0.0	0	0.0	0	0.0	1	3.7	0	0.0	0	0.0	1	0.6

The negative appreciation is rather predominant (56.4%). All perceive the ICTR's performance as insignificant. However, almost a third of respondents had a positive appreciation of this tribunal, given its importance for all of humanity.

- Although perception of the ICTR is negative among high-ranking officials:
  - they wished for a better collaboration with the government,
  - they deplored the absence of its educational role in Rwanda, given its distant location, and
  - they mentioned the weak contribution of this tribunal in the fight against the culture of impunity.
- For the representative of CLADHO, the ICTR plays a deterrent role against genocide. However, he reproaches this court for favoring genocide suspects over victims.
- For a CNDH member, the ICTR is important for applying human consciousness to dramas of this magnitude, so that the Rwandan genocide will never be trivialized.
- The HAGURUKA representative estimates that victims don't mean anything to the ICTR, because they are only considered as witnesses, which is not at all correct because they are parties. For one cannot simply witness the violence to which one is subject; rather victims submit to it, live it, feel the consequences of it, and then testify as witnesses. You cannot merely be a witness, because even in the court you live these atrocities. The HAGURUKA representative deplores the fact that reparations will probably never be granted to victims and yet believes that Arusha has a symbolic value in the consciousness of mankind.

7. Recommendations

7.1. Essay of conclusions

1. Understanding and internalizing the judicial system's mission: Both qualities appear deficient and require an increased effort by different actors and stakeholders (GOR, MINIJUST, the Supreme Court, donors, NGOs, HRNGOs), including systematic documentation and sensitization via diverse approaches (workshops, media campaign, and MINIJUST's progressive operationalization of its mission).
2. Weak inclusion of program donors in the judicial system's activities that they support: In order to offset this weakness, a schedule of meetings between the Supreme Court, MINIJUST, donors, and NGOs must be established and followed. A plan of action to this effect should be made available and updated by MINIJUST.
3. Under-qualification of judicial personnel: Two strategies are imperative. First, personnel must receive a traditional legal education, and second, continuous legal education must take place via seminars, training courses, and study trips. Principle stakeholders in this recommendation are the National Judicial Training Center (whose autonomy needs reinforcement), university institutions, donors, and NGOs.
4. Incentives for the magistrature and improvement of its public image: Some of the measures imperative for addressing these concerns include a more competitive salary scale for qualified personnel, focused continuing legal education, positive rewards, the suppression of defamatory acts and remarks aimed at magistrates, better administrative control of magistrates, and an active campaign against corruption. Stakeholders in this process are the GOR, the Supreme Court, the Superior Council of Magistrates (SCM), donors, and NGOs.
5. Lack of judicial independence: To assure the most judicial independence, it is necessary to reinforce judges' confidence in themselves while improving their professional capacity and code of conduct, assuring greater protection of judges from possible interference, and sensitizing the media to the importance of judicial independence. Those who have a stake in this recommendation are the Supreme Court, the SCM, the NCHR, the magistrates themselves, and civil society, including HRNGOs.
6. Slowness of trials and non-execution of judgments: To cure these perceived weaknesses, administrative responsibilities of judges must be diminished while the capabilities of administrative staff (court clerks and secretaries) are reinforced; courts and prosecutors must be provided with appropriate workplace logistics (vehicles, computers, …) to accelerate investigations and trials, as well as basic documentation and use of their experience effectively by archiving judicial experience while improving database communication. Also, the bailiffs need reinforcement and local authorities should be sensitized on how to execute judgments, especially when dealing with vulnerable people. Stakeholders needed to realize these solutions are the National Law Reform Commission, MINIJUST, the Supreme Court, donors, and NGOs.
7. Citizen ignorance of their rights, obligations, and freedoms: Civic and legal education efforts must take place at all levels of society and through all available channels (MINIJUST, NCHR, teaching and training institutions, HRNGOs, churches, other civic and religious societies, and the media).
8. Social marginalization of vulnerable groups: Initiatives are needed to improve treatment of certain social classes, notably revision of discriminatory laws, creation of positive protections, adoption of concrete social policies and programs relating to these groups' needs, creation of a legal fund to assist indigents, as well as a reparation fund for genocide victims. Stakeholders for this recommendation

are the GOR, the Transitional National Assembly, concerned ministries, NGOs and HRNGOs, and religious communities.

9. Assistance to the Gacaca Jurisdictions and Community Service: The Gacaca Jurisdictions, as well as Community Service, play a crucial role in real-life resolution of the genocide's aftermath. They need assistance in training judges, sensitization, remunerating judges, workplace logistics, monitoring, assuring the safety of judges and witnesses, putting the Community Service management structure in place, and searching for additional funds to aid Community Service program operations. Donors, the GOR, the Supreme Court, the police, the media, and civil society are all necessary stakeholders for accomplishing this recommendation.
10. The ICTR, GOR, and Genocide Victims: Effort should be made to create a closer working relationship between the GOR and the ICTR, and to achieve better recognition of genocide victims' status and appropriate legal assistance for them.

7.2. Table of Recommendations

Problems	**Solutions**	**Interveners**
Lack of understanding of the sectoral policies	- Ad-hoc dissemination of documents - Sensitization through seminars/workshops and media - Elaboration of an operations plan and dissemination of it	GOR MINIJUST Supreme Court MINALOC
Lack of internalization of the sector policies by the end users	Take into account the fundamental principles and values of the judicial system in determining the work objectives of each player and criteria that can be objectively verifiable when evaluating work product	MINIJUST Presidents of Jurisdictions Prosecutors Magistrates
- Lack of strategic planning at the MINIJUST level - Difficulty in coordinating interventions - Lack of data collection and communication structures	- Support the elaboration of a strategic plan for MINIJUST - Reinforce the coordination structure of interventions with the help of donors - Support the establishment of data collection and communication structures - Feedback from MINIJUST and SC to donors and NGOs	Supreme Court MINIJUST Donors and NGOs
Under-qualification of judicial staff and lawyers	- Classic training in law, with a flexible curricula for under-qualified magistrates - Continuing legal education - Study tours, short term trainings	MINIJUST Donors NGOs
Lack of judicial independence	Self-confidence through strengthening of their capacities, professional solidarity, strong commitment of SCM, and the support of civil society, media campaign	SCM Supreme Court Prosecutor General Magistrates Media Civil society

Problems	**Solutions**	**Interveners**
Negative image of magistrates	- Rehabilitation mechanisms through appropriate motivation practices, targeted continuing training, incentives or sanctions - Repression of defamatory statements towards magistrates - Control of the magistrates	Supreme Court SCM Hierarchical officials
Insufficient execution of judgments	Reinforce court bailiffs	MINIJUST
Insufficient physical infrastructure, equipment, and supplies	- Identification and solicitation of funding sources - Submission of requirements to donors and other good will persons - Organization and setup of fora with donors and NGOs according to a mutually agreed upon calendar	GOR Supreme Court MINIJUST Donors NGOs
Lack of judicial, administrative, and policy documentation	- Creation of documentation centers at the jurisdictions and prosecutors' offices - Supply of documentation, magazines, and newspapers to the Bar Association - Study tours, short term trainings	Supreme Court MINIJUST Bar Association Donors and NGOs
Administrative burdens on presidents of jurisdictions and State prosecutors	Appointment of administrators or public managers	Supreme Court MINIJUST
Little knowledge of court proceedings	Greater mobilization of the media	Prosecutors' offices and jurisdictions
Problem of slow proceedings and court adjournments	Reinforce judicial staff, decrease administrative workload for presidents of jurisdictions, provide better motivation, improve handling of docket	Supreme Court Jurisdictions

Problems	**Solutions**	**Interveners**
Corruption	Set up a national program to fight corruption throughout the country	GOR MINIJUST MINALOC NHRC Auditor General
Increasing crime rate	- Civic education - Fight against poverty - Preventive and repressive measures	GOR NPRP Civil Society National Police
Litigants' ignorance of laws, obligations, and rights	Civic and judicial education at all levels and through available channels	NHRC Education and training institutions HRNGOs Churches and other civil associations Media
Social marginalization of vulnerable groups	- Revision of discriminatory laws - Elaboration of laws protecting vulnerable groups - Elaboration and adoption of social policies and programs	Supreme Court GOR MINIJUST Police Donors and NGOs Media
Difficulty in access to the courts	Creation of a fund for legal assistance to vulnerable groups	MINALOC MINIJUST
Difficulty in Gacaca Jurisdictions operations	- Training and remuneration of judges - Logistics - Support in monitoring - Protection of judges and witnesses	Supreme Court GOR MINIJUST Police Donors and NGOs Media
No compensation of genocide victims	Set up compensation fund for victims	GOR
Problems in implementing and operating Community Service *(TIG)*	- Set up of a management and planning structure - Sensitize donors and the population	GOR MINIJUST Media Immediate social environment Religious communities HRNGOs

Problems	Solutions	Interveners
ICTR: - Misunderstandings with the GOR and survivors - Excessive slowness of proceedings - Vulnerable position of victims in Arusha	- Improve collaboration between GOR and ICTR - Legal assistance to the victims as civil parties, not witnesses	GOR ICTR IBUKA, AVEGA HRNGO

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Appendixes